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# THOUGHTS

ON THE

# LETTER of EDMUND BURKE, Eſq;

TO THE

# SHERIFFS of BRISTOL,

ON THE

# AFFAIRS of AMERICA.

Bertie(W)

BY THE EARL OF ABINGDON.

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THE SEVENTH EDITION.

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"Praiſe where you *can*, but cenſure where you *may*."

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# DEDICATION

## TO THE COLLECTIVE-BODY OF THE PEOPLE of ENGLAND.

THAT I ſhould dedicate the following Thoughts to you needs no Comment. The Thoughts themſelves are explanatory of the Reaſon. They were deſigned for the public Good, and whatever means the public Good, belongs, in common Right, to you: but that I ſhould dedicate theſe Thoughts to you at this Period of their Publication, and not at firſt, calls for Explanation.

I have ſaid that theſe Thoughts were deſigned for the public Good: but to deſign is not to effect. From right Intentions right Meaſures do not of Courſe proceed. To obtain the public Good was neceſſary, and this was my Object; but this too is not of certain Conſequence.

Infallibility is not the Characteriſtic of human Science: For although Wiſdom and Folly, like Reſt and Motion, are correlative Terms, Fools commit Errors, and the wiſeſt Men do err. Still however Truth and Falſehood, Right and Wrong, are in their Natures

fixed and immutable: but theſe being the Ends of Knowledge, and Wiſdom the Means to thoſe Ends, the Means applied are not always adequate to the End purſued.

Of this Doctrine the Application to Myſelf was unavoidable. The public Good was my Object: But whether I had made Uſe of the proper Means to that End, or no, was not for me to determine. So far indeed as my Intentions went, of their Rectitude I was conſcious: but how far I had ſucceeded in Ability reſted upon the Judgment of others.

To the Judgment of others I appealed, and I called upon the Public, if I was wrong, to ſet me right. I declared that "Truth being "my only Object herein, I ſhould as readily "look for it in others as ſeek it in myſelf;" and I have waited impatiently for the Event: But notwithſtanding five Editions of theſe Thoughts have been had, and much Time has ſince elapſed, to this very Hour, not the Colour of Objection, nor the Shadow of Argument have been oppoſed to them.

Theſe then are the Circumſtances under which this Dedication now makes its Appearance to you. What Diffidence had before with-held, acquired Confidence hath ſince produced; and as, on the one Hand, if Truth be with me, my Reward will be in its Uſe to You; ſo, on the other, if Error, my Conſolation is, that I have been ever ready to retract it.

But having ſaid, that not the Colour of Objection,

Objection, nor the Shadow of Argument have been oppoſed to theſe Thoughts; I feel myſelf obliged to offer a few Words in Anſwer to one Writer, who has been pleaſed to honour me with his public Correſpondence. This Writer is a Mr. Cartwright, and who, in a Letter addreſſed to me*, has, ſuppoſing me wrong in a Poſition that I have laid down, called upon me, with great Propriety, for my Juſtification. I rejoice to meet ſuch Inquiries. They are the Avenues to Truth. And I am no leſs pleaſed with the Inquirer. He has written like a Gentleman, and what is more than this, like an honeſt Man: For, unlike thoſe *anonymous* Writers, whoſe Fears are leſt the Infamy of their Names ſhould increaſe the Infamy of their Writings, he has affixed his Name to what he has written. It is therefore Matter of Concern to me to find myſelf miſtaken by this Writer: But my Hopes are, that to remove his Miſtake will be equally ſatisfactory to him, as to me.

Mr. Cartwright has made me to ſay, "that "the Coloniſts have not a Right to Freedom "in Trade;" † and this is the Ground upon which my Error is built: but if I deny the Charge, and prove the contrary Aſſertion on my Part, my Error falls to the Ground.

When it is ſaid, "that the Coloniſts have

* Vid. A Letter to the Earl of Abingdon diſcuſſing a Poſition relative to a fundamental Right of the Conſtitution, &c. by John Cartwright. Printed for J. Almon, Piccadilly.

† Vid. Mr. Cartwright's Letter, p. 4.

"not a Right to Freedom in Trade," and the Page is referred to whence the Quotation is taken; one neceſſarily ſuppoſes to find the Words quoted in the Page referred to: But this is not ſo. There is not only no ſuch Terms to be there found, nor the Meaning of ſuch Terms, but the very Reverſe of both.

To take the Matter fairly, I will give the Words as they are from the Pages referred to, (viz. p. 48, and 49, of the Thoughts). "It may "be further aſked, What! Are the Americans "to enjoy all the Rights appertaining to this "Government, and not contribute to its Sup-"port? I anſwer, by no Means; it is not "fitting that they ſhould. The fundamental "Rights of the Engliſh Conſtitution I have "ſhewn to be, *the Security of Life, Liberty, and "Property, and Freedom in Trade*; and to theſe "Rights all Britiſh Subjects *within the Realm*, "are without Exception entitled: But it is "not ſo with Britiſh Subjects *out of the Realm*, "for of them ſomething more has been re-"quired, and of them ſomething more has "been received. They (I mean the Coloniſts) "*ſurrendered*, from the firſt, one of the fun-"damental Rights of the Conſtitution; to "wit, *Freedom in Trade*. This they *gave up*, "and this they *put* into the monopolizing "Hands of their Brethren, as the *Gift* of Con-"tribution for the *Price* of Protection."

Where then is it here ſaid, "That the Co-"loniſts have no Right to *Freedom in Trade*?"

There

There are no ſuch Expreſſions. Where is the Meaning? I find no ſuch Ideas. I have ſaid that they *gave up* this Right, that they *ſurrendered* this Right, that they *put* this Right into the monopolizing Hands of their Brethren, as the *Gift* of Contribution for the Price of Protection: But to do all this they muſt have been entitled to this Right, for no one can ſurrender that to another to which he is not entitled himſelf; and to be entitled to this Right is the very Reverſe of the Aſſertion, "that the Coloniſts have no Right to Free-"dom in Trade."

"Aye," ſays Mr. Cartwright, "but this is a "Right which could not be parted with. Free-"dom in Trade is a fundamental Right of the "Conſtitution, and the fundamental Rights "of the Conſtitution are unalienable." Admitted: but the Manner in which this Right was given up, was no Alienation of it. It was held in a State of Reverſion: For *ceſſat Ratio, ceſſat et ipſa Lex.* It was a Thing given for a Thing to be received in Exchange. A *Quid pro Quo.* Right for Power, Contribution for Protection; and if Protection ceaſed, (or was withdrawn, as has been the Caſe) Contribution ceaſed likewiſe; and the Right reverted (as it has done) to its native Source.

Beſides; This was a Point of ſpeculative Diſquiſition upon which I did not enter. I ſpoke to a Matter of Fact. A Fact of public Notoriety, and incontrovertible. A Fact which

Mr. Cartwright himſelf admits; namely, that this Country did monopolize the Trade of America to the Year 1764.*

Nay more: I ſpoke from the Offers and Wiſhes of the Coloniſts themſelves through their Congreſs, that this *mutual Compact* might continue; (*vide* p. 54. of the *Thoughts*,) and beyond this I did not look. It was not for me to diſpute the Powers, nor define the Rights of Congreſs. I was ſatisfied with both in their Hands, and I had had too many Proofs of their conſummate Wiſdom upon theſe Topics, not to ſay of them as Hamlet did of his Father's Ghoſt; "I'll take the Ghoſt's "Word for a thouſand Pounds" †.

So that although I had been *ſpeculatively* wrong, ſo far as the Authority of the Congreſs went, I was *practically* right, and as it further appears that I did not ſay, nor mean to ſay, "That the Coloniſts had no Right to "Freedom in Trade," nor yet had a Wiſh to deprive them of *that*, or of any other *natural* or *political* Right whatſoever to which they were entitled; ſo I had here (ſatisfactorily too I ſhould hope) have taken Leave of Mr. Cartwright, if there had not been one Point more remaining, whoſe Merits I could wiſh a little to diſcuſs; not only becauſe they do not ſeem to be thoroughly underſtood, but becauſe,

* Vid. Letter, p. 10.

† Mr. Cartwright ſays, "He does not mean *to take the Congreſs* "*at their Word*, becauſe," ſays he, "their Offer exceeded what they "could poſſibly have had legal Powers to fulfil." Vid. Letter, p. 32.

upon

upon their due Solution, the moſt important conſtitutional Doctrine hangs.

The Point is this. Mr. Cartwright objects to my calling the Americans, *Britiſh* Subjects; and ſays that they are *American* Subjects: But, as if conſcious of an Impropriety, he converts them, by a Note immediately after, into *Britiſh American* Subjects.* His Argument is, "Their Allegiance *to the King* did not make "them *Britiſh* Subjects: For were that ſo, then "would the Hanoverians be *Britiſh* Subjects: "But the Truth is, the People of Hanover are "his Hanoverian Subjects, the People of Great "Britain his Britiſh Subjects, the People of "Ireland his Iriſh Subjects; and ſo, in like "Manner, the People of America *were* his A-"merican Subjects." And then he ſubjoins the following Note in Explanation of himſelf. "I do not mean to inſinuate that Great Bri-"tain's Connections with Britiſh America and "with Hanover were of the ſame Nature, "becauſe I know they agreed only in the ſole "Circumſtance of the reſpective Countries "having the ſame Sovereign."

Now although Mr. Cartwright is a little right herein, in my Opinion he is a great deal wrong; and where his Error is, I will take the Liberty to ſuggeſt. It is true, that the Allegiance of the Coloniſts *to the King* did not make them *Britiſh* Subjects: for then, as it is ſaid, the Hanoverians would be Britiſh Subjects. It is alſo true, that the People of Ha-

* Vid. Letter, p. 5.

nover

nover are *his* Hanoverian Subjects, the People of Great Britain *his* Britiſh Subjects, the People of Ireland *his* Iriſh Subjects, and that the People of America *were his* American Subjects: But it is *as true*, that the People of Great Britain and the People of Ireland *are*, and that the People of America were *Britiſh* Subjects likewiſe, which the People of Hanover are not; and the Reaſon of this is, that as *Members of the Britiſh Empire* their Allegiance is *annexed* to the *Crown* of England, which conſtitutes them all *Britiſh* ſubjects equally and alike: Whereas the Allegiance of the People of Hanover is not to the *Crown* of England, but *to the King* of England; thereby making them Subjects *to the King*, but not *Britiſh* Subjects. And hence ariſes the Ground of Miſtake upon which Mr. Cartwright ſeems to have trodden.

The great, the important Line of Diſtinction, which the Conſtitution has drawn between the *King* of England and the *Monarchy* of England, or, in more common Phraſe, between the *King* of England, and the *Crown* of England, is here totally unnoticed; although upon this Difference not only the underſtanding of this Point reſts, but much other Matter of the laſt Conſequence depends.

That the *King* of England is not the ſame, in all Reſpects, with the *Crown* of England, or that, in other Words, the *King* of England and the *Monarchy* of England are ſeparable, and not inſeparable; is a Propoſition not to be conteſted.

But

But if it were, there needs no better Examples for its Proof, than thoſe that are before us.

That the People of Hanover are the King's Hanoverian Subjects, and that the People of America *were his* American Subjects, is admitted by Mr. Cartwright; and it is added by me, that the People of America were alſo *Britiſh* Subjects: which (as Mr. Cartwright likewiſe admits) the People of Hanover are not: But let us try this State of theſe Examples in the Poſition of a Caſe.

Before that bigotted Tyrant James II. had his Crown taken from his Head, and was driven out of this Kingdom, as one unfit to wear that Crown, the People of America were *his* American Subjects; and if we *ſuppoſe* that he was alſo Elector of Hanover, it will follow that the People of Hanover were *his* Hanoverian Subjects: But mark the Difference in the Sequel.

When James II. was driven out of the Kingdom, did the People of America continue *his* Subjects? *No.* When James II. was driven out of the Kingdom, did the People of Hanover continue *his* Subjects? *Yes.* Why? The Reaſon is plain. The *People of America*, being Members of the *Britiſh* Empire, owed Allegiance to the *Monarchy* of the State; and through that Monarchy to the *Monarch*: but in the Inſtant that the Monarch ceaſed to reign, although Allegiance continued to the *Monarchy*, it ceaſed to the *Monarch*. The Facts are true in all their Parts. Upon the Expul-

ſion

ſion of James II. the People of America were no longer *his* Subjects, but they were ſtill Subjects; for they owed Allegiance to the Monarchy: which Monarchy continued to exiſt, though without a Monarch* (or otherwiſe an Appeal muſt have been made to you as the Collective Body of the People to form another Conſtitution); and when the Monarchy was filled in the Perſon of our glorious Deliverer William III, Allegiance veſted in him; and the People of America, before Subjects to the Monarchy, now became Subjects to the King. But it was not ſo with the People of Hanover: For they, *not being Members of the Britiſh Empire*, owed no Allegiance to the Crown or Monarchy, but their Allegiance was *perſonal* to the King, as Elector of Hanover: which Perſonality James II. carried away with him, and the People of Hanover did not continue Subjects to the King, in the Perſon of William III.†

From theſe Circumſtances then, the following Corollaries reſult: That the Allegiance of Subjects is due *to the Crown*, and through the

* In the famous Conference between the Lords and Commons at the Convention, Serjeant Maynard ſaid, "that the Conſtitution "notwithſtanding the Vacancy, was the *ſame*; that the Laws that "were the Foundations and Rules of that Conſtitution were the "*ſame*; but if there was in any particular Inſtance a Breach of that "Conſtitution, that would be an Abdication, and an Abdication "would infer a Vacancy," &c. See Echard's Hiſt. of Eng. B. 3, ch. 5. p. 1144. Fol. Edit.

† It muſt be noted, that what is here ſaid of James II. is upon the ſuppoſed Fact (which is as concluſive as if real) that he was both King of England and Elector of Hanover. In the Perſon of George I. the Fact exiſted, and continues ſo to do.

Crown;

Crown, to the King wearing that Crown: * That every Member of the Empire owes Allegiance *to the Crown*, and of courſe is both a *Britiſh* Subject, and a Subject to the *King*: But every Subject to the King is not a Member of the Empire (as in the Caſe of Hanover), and therefore, not owing Allegiance to the Crown, is not a Britiſh Subject: That this Allegiance to the Crown ariſes out of the Conſtitution, for it was the Conſtitution that created the Monarchy, and the Monarchy the King, not the King the Monarchy: That when the King ceaſes to be King, the Crown retains its Allegiance, and the King does not; for it is the Crown that conveys Allegiance to the King. When James II. was a *Vagabond* in France, the Crown of England gave Allegiance to William III; and of this Sort Precedents in our Hiſtory are multitudinous, but here ſuperfluous. † And now there being another Species of Allegiance, which, the Conſtitution

* This Doctrine whilſt it deſtroys the Jeſuitical Diſtinction of a King *de Jure*, and a King *de Facto*, is inconteſtably proved by the Authorities that Sir William Blackſtone quotes, though in Oppoſition to his own Opinion. Serjeant Hawkins ſays, "that a King *out of* "*Poſſeſſion* is ſo far from having any Right to our Allegiance by "Virtue of any other Title which he may ſet up againſt the King "*in Being*, that we are bound by the Duty of our Allegiance to "reſiſt him." Vide Blackſtone's Commentaries, v. 4. p. 77. and Hawk. Pl. Cr. B. 1. p. 36. See alſo Hale's Pl. Cr. B. 1. p. 60.

† The Spenſers in the Reign of Edward II. maintained, "That "Homage and Legiance is due to the King, rather in Relation to "the Crown, than abſolutely to his Perſon; becauſe no Legiance "is due to him before the Crown be veſted upon him: that if the "King do not govern according to Law, the Lieges in ſuch Caſe "are bound by their Oath *to the Crown* to remove him either by "Law or Rigour." See Nat. Bac. Diſc. part 2. p. 52.

knowing

knowing nothing at all of, I will here juſt mention in Ridicule and Contempt; and becauſe it is owing to this Innovation, that the Crown of England has loſt more than one Half of its Empire. This new-fangled Doctrine is, that Allegiance is due to the Legiſlature, or to the Parliament, or as the Archbiſhop of York calls it, by Way of giving the Ton of the Times in a *clandeſtine Publication** of his, (if I may ſo ſpeak) "*Allegiance to the State*;" thereby making of every Member of the State a petty King, or petty Tyrant; and taking, as a Member of the State himſelf, of courſe Allegiance to himſelf. But, as I have obſerved before, Allegiance is due to the Monarchy, and to no other Part of the State; and the Monarchy admits but of one King at a Time, and the Ariſtocracy and the Democracy of none.

But I have ſaid, that upon the due Solution of the Merits of this Point, the moſt important conſtitutional Doctrine hangs; and I will conciſely explain myſelf. The Doctrine, I allude to, is that of the *Attributes* aſcribed to the King: Attributes which however ſtrictly juſt in Inſtitution, by no Means warrant the Inferences that are drawn from them.†

The Caſe, in a Word, is this. When the

* This Publication was a Sermon which was preached, and printed, and handed about: But not advertized in the public Prints, nor ſold.

† Theſe Inferences are, that "the King can do no wrong" that "the King never dies," that "the King is always a Minor," &c.

Conſtitution

Conſtitution of England was formed, a Combination of the three Forms of Government (viz. Monarchy, Ariſtocracy, and Democracy) for the Purpoſe of one, being, as is evident therefrom, the Object of Settlement; it was not only neceſſary that the Rights appertaining to each Form ſhould remain, but that theſe Rights ſhould be clearly aſcertained, in order to produce, by their ſeperate Counteractions, the great Deſignation of their Union.† To the Monarchy then was given *Sovereignty*, *Perfection*, and *Perpetuity* as Attributes, in the *Abſtract*, eſſential to its Exiſtence: For without Sovereignty, Power had no Source of Derivation, without Perfection Error, which was to be avoided, was imputable; without Perpetuity what was meant to laſt was ſubject to Annihilation; and therefore ſuch were the conſtitutional Attributes of the Monarchy: but becauſe theſe Attributes were ſo predicated of the Monarchy, does it therefore neceſſarily follow that they are the exiſting Qualities of the Monarch? An Example will afford the beſt Proof, and one Example will ſuffice for all the Reſt.

From the abſtract Attribute of Perfection in the *Monarchy*, it is inferred, "that the *King* can do no wrong;" and, in Illuſtration of this Doctrine, Sir William Blackſtone lays it down,

† "In a Conſtitution like ours, the Safety of the Whole depends "on the Balance of the Parts; and the Balance of the Parts on "their mutual Independency on one another." Vide Bolling. Rem. Hiſt. of Eng. Oct. Ed. p. 30.

that

that " the *King* is not only incapable of doing " wrong, but even of thinking wrong: He can " never mean to do an improper Thing: In " him is no Folly or Weakneſs."* But let us ſee how this Weſtminſter-Hall Inference, (for it is called a *legal* Maxim) and its Comment agree with the Conſtitution, with Nature, with Reaſon, with Common Senſe, with Experience, with Fact, with Precedent, and with Sir William Blackſtone himſelf; and whether, by the Application of theſe Rules of Evidence thereto, it will not be found; that (from the Want of Attention, as I have taken Notice of before, to that important Line of Diſtinction which the Conſtitution has drawn between the *King* of England, and the *Crown* of England) what was attributed to the *Monarchy* has not been given to the *Monarch*, what meant for the *Kingſhip* conveyed to the *King*, what deſigned for the *Thing* transferred to the *Perſon*, what intended for *Theory* applied to *Practice*; and ſo in Conſequence that whilſt the Premiſſes (of the *Perfection* of the Monarchy) be true, the Concluſion (that the King can do no wrong) be not falſe. †

* Vid. Black. Comm. v. 1. p. 246. This Comment upon the Text that " the King can do no wrong," might have paſſed well enough in the Reign of James I.; and no doubt would have been very acceptable to that *learned Ideot:* But it is now a Century and a Half ſince that Reign, and " Mankind being," according to Doctor Prieſtly, " in a progreſſive State of Improvement," are of Courſe a Century and a Half wiſer. Vid. Prieſtly on Government, p. 2.

† " How eaſily does the Worſhip of the *Divinity* degenerate into " a Worſhip of the *Idol?*" Vid. Hume's Eſſays, p. 46.

And

And firſt in Reference to the Conſtitution: To which if this Matter be applied (meaning what it expreſſes, and if it do not it is unworthy of Notice) it is ſubverſive of a Principle in the Conſtitution, upon which the Preſervation of the Conſtitution depends; I mean the Principle of *Reſiſtance*: A Principle which, whilſt no Man will now venture to gainſay, Sir William Blackſtone himſelf admits, "*is juſtifiable to the Perſon of the Prince* when "the Being of the State is endangered, and "the public Voice proclaims ſuch Reſiſtance "neceſſary;" and thus, by ſuch Admiſſion, both diſproves the Maxim, and overſets his own Comment thereupon: For to ſay that "the King can do no wrong," and that "he "is incapable even of thinking wrong," and then to admit that "Reſiſtance to his Perſon "is juſtifiable," are ſuch jarring Contradictions in themſelves, that until reconciled, the Neceſſity of Argument is ſuſpended.*

With Reſpect then, in the next Place, to the Agreement of this Maxim and its Comment with Nature, with Reaſon, and with Common Senſe, I ſhould have thought myſelf ſufficiently juſtified in appealing to every Man's own Reflection for Deciſion, if I had not been made to underſtand that Nature, Reaſon, and Common Senſe had had nothing to do with either. Sir William Blackſtone ſays, "That though a philoſophical Mind will con-

* Vid. Blackſtone's Comm. v. 1. p. 251.

" ſider the royal Perſon merely as one Man
" appointed by mutual Conſent to preſide
" over others, and will pay him that Reve-
" rence and Duty which the Principles of So-
" ciety demand, yet the Maſs of Mankind will
" be apt to grow inſolent and refractory if
" taught to conſider their Prince as a Man of
" no greater Perfection than themſelves; and
" therefore the Law aſcribes to the King, in
" his high political Character, certain Attri-
" butes of a great and tranſcendant Nature,
" by which the People are led to conſider him
" in the Light of *a ſuperior Being*, and to pay
" him that awful Reſpect which may enable
" him with greater Eaſe to carry on the Bu-
" ſineſs of Government." So that, in order to govern with greater Eaſe, (which by the bye is mere Aſſertion without any Proof) it is neceſſary to *deceive* the Maſs of Mankind, by making them believe, not only what a philoſophical Mind cannot believe, but what it is impoſſible for any Mind to believe; and therefore in the Inveſtigation of this Subject, according to Sir William, neither Nature, Reaſon, nor Common Senſe can have any Concern.

But however deſirous I might be to yield up my Senſes, to the Authority of ſo great a Man; I am from the ſame Authority, withheld from doing ſo: For if I could believe that the King was a *ſuperior Being*, I ſhould have no Heſitation to believe a Doctrine, which Sir William himſelf explodes; and explodes becauſe

becauſe repugnant "*to common Reaſon:*" I mean the Doctrine of "*the Divinity of regal Sway*," which James I, and the Reſt of his Race, thought fit to aſſume to themſelves. I ſay I ſhould not heſitate at this, becauſe the one neceſſarily follows from the other. If James I. was a *ſuperior Being*, his Government was *de jure divino*; and if it be neceſſary to impoſe a Belief on the Maſs of Mankind in the former Inſtance, why ſhould it not be equally neceſſary in the latter? The Caſes do not ſeem to me to differ, though Sir William's Sentiments do upon them; and therefore being thus left at my Option, I muſt own I cannot countenance Politics of ſuch a Complexion. They may be the Politics of *Machiavel*, but, I am ſure, they are not the Politics of *John Bull*. *Sum Davus non Oedipus*, ſays honeſt John; and "Honeſty is the beſt Policy" with him.* It is the only Policy of our Government, and if this Knowledge were not as old as the Government itſelf, a modern Proof would afford the fulleſt Conviction. Contraſt the Adminiſtration of that *virtuous* Stateſman, the late Earl of Chatham, with that of the preſent *notorious* Miniſter, whoever he be; † and the Demonſtration of

* "Hæc Romana eſſe," ſays Livy, "Non verſutiarum Puni-"carum, neque Calliditatis Græcæ, apud quos fallere Hoſtem glo-"rioſus, *dolo quam Virtute.*"

† Lord North has repeatedly declared in the Houſe of Commons "that he never looked upon himſelf in the Light of Miniſter, that "he was no more than the Servant of the Public, whoſe Councils it "was his Buſineſs to execute and not to direct;" and to this Declaration his Lordſhip has, in the ſame Manner, added this prudent Reſolution, "that (without Reſponſibility, and although the Councils

Euclid will follow. The *former*, by knowing that "Honeſty *was* the *beſt* Policy," and by making that the Rule of his Adminiſtration, brought this Country to a Pitch of Glory, Grandeur, and Power, unknown to any other State antient or modern: The *latter*, by believing that "Honeſty was the *worſt* Policy," and by making that the Rule of his Miniſtry, has reduced this once proud Empire to the contemptible Level of the Miniſter himſelf.

It remains to examine in how much this Maxim and its Comment agree with Experience, with Fact, with Precedent, and with Sir William Blackſtone himſelf. And here it is Matter of moſt curious Speculation, to obſerve a Maxim laid down, and which is intended for a Rule of Government, not only without a ſingle Caſe in ſupport of it, but with a String of Caſes that may be carried back to *Egbert* the firſt Monarch of England, in direct Oppoſition to the Doctrine. Who is the Man, that reading the *paſt* Hiſtory of

which he is to execute be fatal to the Intereſts of the Nation) "he "will not reſign, but will continue to hold the Office of Prime "Miniſter," and of Courſe to enjoy the Honours and Emoluments that are to be derived from it. How different the Earl of Chatham! The Earl of Chatham *reſigned* his Office, becauſe he would not be anſwerable for Meaſures that he did not direct; Lord North *holds* his Office, becauſe he neither directs the Meaſures nor is anſwerable for them. But it is in this Inſtance alone, that any Compariſon between theſe two Characters is intended: for Lord Chatham was Miniſter in Fact as well as in Office, and as ſuch the People looked up to him; whilſt Lord North openly confeſſes his own mere Oſtenſibility, and the People look down on him as one, whoſe ſole Occupation is, by the mere Dint of *Joke* from the Treaſury Bench, to get their Money into the Treaſury. And in this it muſt be owned, *no Servant of the Public* ever *outjoked* his Lordſhip.

this

this Country, will ſhew us any King that has done no wrong? Who is the Reader that will not find, that all the Wrongs and Injuries which the free Conſtitution of this Country has hitherto ſuffered, have been ſolely derived from the arbitrary Meaſures of our Kings? And yet the Maſs of Mankind are to look upon the King, as a ſuperior Being; and the Maxim that "the King can do no wrong," is to remain as an Article of Belief. But without puſhing this Inquiry any further, let us ſee what Encouragement Sir William Blackſtone himſelf has given us for our Credulity. After ſtating the Maxim, and preſenting us with a moſt lively Picture, "of our ſovereign "Lord thus *all perfect* and *immortal*," what does he make this All-perfection and Immortality in the End to come to?* His Words are theſe: "For when King Charles's deluded Brother at-"tempted *to enſlave* the Nation," *(no Wrong this, to be ſure)* "he found it was beyond his Power: "the People both COULD, and did reſiſt him: "and in Conſequence of ſuch Reſiſtance, *obli-*"*ged* him to quit his Enterprize and his "Throne together." †

The Sum of all is this: That the Crown of England and the King of England are diſtinguiſhable, and not ſynonimous Terms: That Allegiance is due *to the Crown*, and through the Crown *to the King:* That the Attributes of the Crown are Sovereignty, Perfec-

* Vide Blackſtone's Comm. v. 1. p. 250. † Id. v. 4. p. 433.

 tion,

tion, and Perpetuity; but that it does not therefore follow, "that the King can do no "wrong." It is indeed to be admitted, that in high Reſpect for the Crown, high Reſpect is alſo due to the Wearer of that Crown; that is, to the King: But the Crown is to be preferred to the King, for the firſt Veneration is due to the Conſtitution. It is likewiſe *to be ſuppoſed*, that the King *will* do no wrong; and as to prevent this, a Privy Council is appointed by the Conſtitution to aſſiſt the King in the Execution of the Government, ſo if any Wrong be done, "theſe Men," as Monteſquieu expreſſes it, "may be examined and puniſhed".*

But if any future King ſhall think to ſcreen theſe evil Counſellors, from the juſt Vengeance of the People, by becoming *his own Miniſter*; and, in ſo doing, ſhall take for his Sanction, "*the Attribute of Perfection*," ſhall truſt to the Deception of his being "*a ſuperior Being*," and cloak himſelf under the Maxim, that "*the*

* Except the Parliament, which is the great Council of the Nation, the Judges, and the Peers, who, being the hereditary Counſellors of the Crown, have not only a Right, but are bound *in Foro Conſcientiæ* to adviſe the King for the public Good; the Conſtitution knows of no other Council than the *Privy Council*. Any other Council, like Clifford, Arlington, Buckingham, Aſhley, Lauderdale, and as the Initial Letters of theſe Names expreſs, is a CABAL, and as ſuch ſhould be ſuppreſſed Nat. Bacon, ſpeaking of the Loſs of Power in the grand Council of Lords, ſays. "The "Senſe of State once contracted into a *Privy Council*, is ſoon re-"contracted into a *Cabinet Council*, and laſt of all into a *Favour-"ite* or two; which many Times brings Damage to the Public, "and both *Themſelves* and *Kings* into extreme *Precipices*; partly "for Want of Maturity, but principally through the Providence "of God over-ruling irregular Courſes to the Hurt of ſuch as walk "in them." Pol. Diſc. part 2. pag. 201.

"*King*

"*King can do no wrong*;" I ſay, in ſuch a Caſe, let the Appeal already made to the Conſtitution, to Nature, to Reaſon, to Common Senſe, to Experience, to Fact, to Precedent, and to Sir William Blackſtone himſelf ſuffice; and preclude the Neceſſity of any further Remarks from me.*

Having thus explained the Reaſon of this Dedication to you, and having removed the only ſeeming Obſtacles that have been thrown in my Way, with ſuch Obſervations and Remarks upon them, as may be found perhaps not altogether impertinent; I now come to ſay a Word or two more in Addition to the Thoughts themſelves, as tending not only to their Elucidation, but as ſerving, more directly, to point out the Source of our preſent Political Diſtractions, in order to their Remedy and Redreſs.

In the Courſe of the following Thoughts, the principal Object of Conſideration has been the Doctrine of "the Omnipotency of Parliament:" But as the Importance of this Doctrine riſes, in Proportion to the Attention that is given to it, ſo a Renewal of the Subject here,

* For Experience, Fact, and Precedent, ſee the Reigns of King John, Henry III. Edward II. Richard II. Charles I. and James II. See alſo *Mirror of Juſtices*, where it is ſaid, "that this grand Aſ-"ſembly (meaning the now Parliament or then Wittena-gemotte) is "to confer the Government of God's People, how they may be kept "from Sin, live in Quiet, and have Right done them, according to "the Cuſtoms and Laws; and more eſpecially *of Wrong done by* "*the King*, Queen, or their Children:" To which Nat. Bacon adds this Note, "At this Time *the King might do wrong*, &c. and "ſo ſay Bracton and Fleta of *Kings* in their Time." Diſc. part 1. pag. 37. Lond. 1739.

and to which alone I mean to confine myſelf, will not, I truſt, be thought a Work of Supererogation in me; nor yet, leading as it does to a propoſed Plan of Reformation, will it prove without its Uſe to you.

The Doctrine itſelf is, as I have juſt ſtated it to be, that of "the Omnipotency of Parliament;" and it is under this Head that I now mean to conſider it: But it having made its Appearance to the World under other Topics of Argument differing in Expreſſion, according to its different Aſſertors, though agreeing in Sentiment; it may not be amiſs that each be brought in Conjunction with the other, that all in one collected View may be ſeen. By one then, it has been called "the Supremacy of Parliament:" by another, "the Right of Par-"liament to *unlimited* Power in and over the "whole Britiſh Empire:" By a third, "a Right "to bind by Act of Parliament *in all Caſes* "*whatſoever*;" and ſo ſays a modern Statute of itſelf: By a fourth, it is ſaid, "that the "Legiſlative Authority of King, Lords, and "Commons is as *deſpotic* over all Britons, let "them live wherever they pleaſe, as the "Grand Turk is over his own Subjects." And again, "Abſolute Deſpotiſm muſt lodge ſome-"where, and nothing can be more unlimited "in Power than an Act of Parliament:"* And laſtly, as if to concenter all poſſible Powers

* See Political Eſſays printed for W. Strahan, and T. Cadell in the Strand, 1762. pag. 39.

into

into one, the Phraſeology adopted is, "the Om-
"nipotence of Parliament." And which I men-
tion again, laſt as well as firſt, becauſe the Weight of Authority whence this Poſition is derived has, I am led to think, not only eſtabliſhed this Doctrine in Theory, by the implicit Faith of others therein, but has proved too the unhappy Foundation of its Practice. *

Such I ſay then is the Doctrine, and theſe the Terms of Language in which it has been conceived and expreſſed. But I may now perhaps be told, that if ſuch Weight be due, as I have admitted, to the Authority upon which this Doctrine ſeems to reſt; it is, at leaſt, a Mark of Preſumption in me, under any Circumſtances, to controvert, or in any Shape, to raiſe Objections thereto. And of this Reproof, ſo far as it goes, there is no one who more ſenſibly feels the Impreſſion than myſelf. But my Juſtification being grounded on a Maxim of long Influence over my Conduct, that to Precedents not founded on Right, and to Authority, however great, not ſupported by Reaſon, no *Deference* is due; † this will lead me to the Application of this Maxim to the preſent Caſe, and of Courſe to an Examination of the Subject more particularly and in Detail.

* Mr. Addiſon ſays, "Moſt of our Fellow-ſubjects are guided "either by the Prejudice of Education, or a *Deference* to the Judge-"ment of thoſe who, perhaps, in their own Hearts, diſapprove the "Opinions which they induſtriouſly ſpread among the Multitude."

† This Maxim is, to thoſe who adopt it, the Exception to Mr. Addiſon's Rule.

The

The Authority alluded to, I am already anticipated in ſaying, is that of Sir William Blackſtone; for to whom can ſuch Weight be due if not to the learned Author of the Commentaries on the Laws of England! But to this Authority it is now neceſſary, from theſe Commentaries, to add the following Quotation; that the one may ſupport the other, and that both may ſtand the Teſt of Inquiry. "The Power and Juriſdiction of Parliament," ſays Sir Edward Coke, "is ſo tranſcendent "and abſolute, that it cannot be confined, ei-"ther for Cauſes or Perſons, within any "Bounds.* And of this high Court" (of *Juſtice*, I think Sir Edward calls it) he adds, "it "may be truly ſaid, *Si Antiquitatem ſpectes, eſt "vetuſtiſſima; ſi Dignitatem, eſt honoratiſſima; "ſi Juriſdictionem, eſt capaciſſima.* It hath ſo-"vereign and uncontrolable Authority in "making, confirming, enlarging, reſtraining, "abrogating, repealing, reviſing, and ex-"pounding of Laws, concerning Matters of "all poſſible Denominations, eccleſiaſtical, or "temporal, civil, military, maritime, or cri-"minal: this being the Place where that ab-"ſolute *deſpotic* Power, which muſt in all

* This Quotation from Sir Edward Coke is ſtated by Judge Hales in the following Manner: "Of the Power and Juriſdiction of Par-"liament *for making of Laws in proceeding by Bill*, it is ſo tranſ-"cendent and abſolute, as it cannot be confined either for Cauſes "or Perſons within any Bounds." The Words *for making of Laws in proceeding by Bill* are omitted by Sir William Blackſtone: The Inſertion of which is, *quoad hoc*, a plain Limitation of the Power of Parliament; whereas its Omiſſion is inſomuch an Enlargement of that Power. See Hales of the Original Inſtitution of Parl. p. 46.

"Governments

" Governments reſide ſomewhere, is entruſted
" by the Conſtitution of theſe Kingdoms.
" All Miſchiefs and Grievances, Operations
" and Remedies, that tranſcend the ordinary
" Courſe of Laws, are within the Reach of
" this extraordinary Tribunal. It can regu-
" late or new model the Succeſſion to the
" Crown, as was done in the Reign of Henry
" VIII. and William III. It can alter the
" eſtabliſhed Religion of the Land, as was
" done in a Variety of Inſtances, in the
" Reigns of Henry VIII. and his three Chil-
" dren. It can change and create afreſh even
" the Conſtitution of the Kingdom, and of
" Parliaments themſelves; as was done by
" the Act of Union, and the ſeveral Statutes
" for triennial and ſeptennial Elections. It
" can, in ſhort, do every Thing that is not
" naturally impoſſible; and therefore ſome
" have not ſcrupled to call its Power, by a
" Figure rather too bold, *the Omnipotence of Par-*
" *liament*. True it is, that what Parliament
" doth no Authority upon Earth can undo." *

This is the Quotation. But what is there in this Quotation that is deciſive of the Doctrine intended to be laid down therein? I will examine its ſeveral Parts. And, *Firſt*, it conſiſts of an Appeal to the Authority of Sir Edward Coke: *Secondly*, it reſts on Precedents: and, *Thirdly*, it contains, without Argument

* Vide Blackſtone's Comm. vol. i. pag. 161. for what further is ſaid upon this Subject.

or

or Reaſoning, without Principles or Maxims, the bare Aſſertion and Opinion of Sir William himſelf. " True it is," ſays Sir William, " that what Parliament doth, no Authority " upon Earth can undo."

Of the *firſt* then, the Appeal to Sir Edward Coke is but an Appeal from one Authority to another; and as ſuch is to be regarded only: But here the Queſtion is, does the Authority of Sir Edward Coke give Sanction to this Appeal? Or, in other Words, does it furniſh ſuch Premiſſes as warrant the Concluſions that Sir William has drawn from it? I think not; and I reaſon thus. That the Power and Juriſdiction of Parliament, in the Exerciſe of thoſe Rights which the Conſtitution hath eſtabliſhed, is *tranſcendent* and *abſolute*, is not to be diſputed; but to be *tranſcendent* and *abſolute* is not to be *deſpotic*, as Sir William hath inferred: for in Deſpotiſm the very Idea of Rights is excluded. And that this was the Meaning of Sir Edward Coke muſt be preſumed, or Sir Edward will be found to have contradicted himſelf; for he hath ſaid too, (and if his Authority is to be taken in one Inſtance, it muſt be received in another) " That the Common and Statute Laws of " England are, in the Maſs and Bulk of " them *unalterable*." * So that if the Power and Juriſdiction of Parliament was *deſpotic*, the Maſs and Body of the Laws of England

* 2 Inſt. pag. 187. Bracton. W.

could

could not be *unalterable*; for the Power of Deſpotiſm is *unlimited*: but the Maſs and Body of the Laws of England are, according to Sir Edward, *unalterable*; and therefore, according likewiſe to Sir Edward, the Power and Juriſdiction of Parliament cannot be *deſpotic*: for each Aſſertion contradicts the other, and "*Dua contradictoria non poſſunt ſimul eſſe* "*vera.*"

But to illuſtrate this Matter by Example. An Act of Parliament paſſes, declaratory of the Right of the Subject to Trial by Jury; and declares, that, Whereas the Chief Juſtice of the Court of King's Bench hath aſſumed to himſelf the Power of determining by his Deciſion Matters cognizable only to Juries, to the Suppreſſion of Trial by Jury, and to the Introduction of the Tyranny of the Civil Law in Excluſion of the Liberty upheld by the Common Law of the Land;* Be it therefore enacted, and it is hereby enacted and declared, That Trial by Jury is, and ever hath been, an original and fundamental Right of the Conſtitution eſtabliſhed *per Legem Terræ*, unalterable and irrevocable but by a Conven-

* "About the Year 1666 the Lord Chief Juſtice Kelyng was "queſtioned in Parliament for over-awing and putting a Reſtraint "upon Juries; and the Houſe came to ſeveral Reſolutions upon his "Caſe, and ordered him to be proſecuted: But by Reaſon of the "Houſe being prorogued, and he himſelf not long after dying in "Diſcontent, we do not find there were any further Proceedings "made therein." Triumphs of Juſtice, fol. Lond. 1681. p. 29, 36. Cardinal Wolſey too by his endeavouring to introduce the *Imperial Laws*, and by an exorbitant Uſe of his Legatine Power, loſt all and died in Ignominy and Diſgrace. 4 Inſt. 89. 3 Inſt. 208.

tion

tion of the People (as at the Revolution)* intending an Alteration therein, and agreeing thereto, &c. &c.

In this Act then it is plain, that the Power and Juriſdiction of Parliament is *tranſcendent* and *abſolute*, but not *deſpotic*; for nothing derogatory to the Conſtitution is enacted therein: but on the contrary, whilſt the Act is founded upon, and *grows out of the Conſtitution*,† over which the Power and Juriſdiction of Parliament is by Inſtitution placed for Protection, it ſhews demonſtratively what that "ſupreme Legiſlative Authority of Great Britain," ſo much talked of, and yet ſo little underſtood, is; and which, when conſidered in this Light, is certainly ſo far "not to be "confined, either for Cauſes or Perſons, "within any Bounds," that from the very Nature of Society, as well as by Compact, the whole Force of the Empire is bound to ſupport it.

But let the Weights be now placed in the oppoſite Scale, and ſuppoſe an Act of Parliament to paſs to the following Effect; That whereas it hath been found by our truſty and well-beloved Chief Juſtice of the Court of King's-Bench that Trials by Jury, although an

* "The Settlement at the Revolution was made by a Conven-"tion of the Lords Spiritual and Temporal, and a *full* and *free* "Repreſentative of *the whole Body* of the People." See Diſſertation on Part. pag. 129.

† Junius ſays, "Be aſſured that the *Laws*, which protect us in "our Civil Rights, *grow out of the Conſtitution*, and that they muſt "fall or flouriſh with it. See Junius's Letters, Dedic. p. 3.

original

original and fundamental Right of the People eſtabliſhed by the Conſtitution, and ſupported by the Law of the Land, are become inconvenient and of Hindrance to the preſent Object of Government, and that the *Decretals* of Judges in the Stead thereof will be better ſuited to the End propoſed; Be it therefore Enacted, and it is hereby Enacted, &c. &c. Now by this Act the Power and Juriſdiction of Parliament is not only *tranſcendent* and *abſolute*, but it is *deſpotic*. It is to aſſume a Power to which it is not by Right entitled. It is Uſurpation. It is to take away that, which, by Inſtitution, it was deſigned to protect. It is to deſtroy, and not to preſerve a Right. And therefore ſuch an Act of Parliament is not only *ipſo facto* illegal and void, but the whole united Force of the Community is bound to oppoſe it; to demand its Repeal; and to purſue the Framers thereof to the ſame condign Puniſhment, that the great Hampden did Charles the Firſt, for his illegal and unconſtitutional Proceedings.

So much then for the Appeal to the Authority of Sir Edward Coke. And now, ſecondly, for the Precedents quoted; of which enough having been ſaid, "as importing no Autho-"rity but upholding Error," in the Thoughts themſelves, I ſhall here content myſelf with a ſhort Queſtion or two only in Remark upon them.

If the Alteration from triennial to ſeptennial Elec-

Elections be produced by Sir William as a Precedent to determine the Omnipotence, or Right of Parliament, "to change and create "afreſh the Conſtitution;" may not this ſame Omnipotence "change and create afreſh the "Conſtitution" by another Act of Parliament, and declare the Houſe of Commons independent of the People, and *perpetual?* And will Sir William venture to ſay that Parliament hath a Right to do this? I muſt anſwer, Moſt certainly; Or, otherwiſe, Omnipotence is no longer omnipotent. But Sir William hath already ſaid ſo: For he hath affirmed "that what Parliament doth no Authority "upon Earth can undo," and ſo of Courſe if this be done, it cannot be undone; though in Conſequence thereof, *Actum eſt de Republicâ.* But it may be objected, that this is an *unreaſonable* Suppoſition; and perhaps it is: And yet even this is no Argument with Sir William: For he tell us in another Place, "That if Parliament will poſitively enact a "Thing to be done which is *unreaſonable*, I "know of no Power that can controul it."* And therefore ſaith the Omnipotence of Parliament, through the Breath of Sir William; I will enact what is *unreaſonable*, and you the Collective-Body of the People of England ſhall receive it as *reaſonable*. I will make the King *abſolute*, and the Houſe of Commons *perpetual* to regiſter his Edicts, and you ſhall

* See Blackſtone's Comm. v. i. p. 91.

ſubmit

ſubmit to both. I will ſubſtitute Slavery for Liberty, and the Exchange ſhall be approved. In ſhort, I will be *arbitrary*: For am I not "that abſolute *deſpotic* Power which muſt in "all Governments reſide ſomewhere?"

Such is then, and ſuch muſt be, the Language of "the Omnipotency of Parlia-"ment;" and yet to what Purpoſe, or how in the Nature of Things, or in Common Senſe, an *arbitrary Power* can, by any poſſible Conſtruction, be ſaid to exiſt in a *free State*, as ours is, founded upon Rights *natural* and *political*, and ſupported by a Conſtitution,* Sir William has no where, that I know of, explained in Argument. And therefore I proceed *thirdly* to the Conſideration of the bare Aſſertions and Opinion of Sir William, as ſtated in the Quotation from his Commentaries; and which being Matter of Authority only in him, I ſhall take the Liberty to anſwer by the Authorities of others in Oppoſition thereto.

And firſt I ſhould have begun with the Authority of Mr. Locke, but Sir William having ſet him down, in one Place, as a mere Theoriſt, in another as a viſionary Republican, and in a third, together with Milton and Sidney,

* "It was this Depravity of the Few, (which is oftner the "greater, becauſe born no better than other Men, they are edu-"cated worſe) which obliged Men firſt to ſubject *Government to Con-"ſtitution*, that they might preſerve *ſocial*, when they gave up *na-"tural* Liberty, and not be oppreſſed by *arbitrary Will*." See Diſſert. on Parties, Octavo Edition, pag. 144.

in the Company of Watt Tyler and Jack Cade, † I ſhall in Reſpect to Sir William, pay no Attention whatever to this Authority; though Sir William has not himſelf forborne to do ſo, with Expreſſions of much Satisfaction, when it anſwered his Purpoſe: * But I ſhall have recourſe to the Authority not of a viſionary Republican, but of a rank Tory; as for that Reaſon the moſt unimpeachable that can nowadays be produced: I mean the Lord Bolingbroke, from whoſe Works the following Quotation is taken. ‡ "Thus the Col-

† It is upon the Principles of this ſaid Jack Cade, who was an Iriſhman, that his Countrymen in Ireland are now acting. And it were much to be wiſhed, if theſe Principles of his be what Rapin relates of them, that the Iriſh would be ſo good as to ſpare poor old England a few of Jack's Deſcendants; as the Breed of the Lockes, the Miltons, and the Sydneys are almoſt entirely extinct here. Rapin ſays, "The King having Notice of the Approach of "the Rebels, ſent to know the Reaſon of their appearing thus in "Arms. *Cade* anſwered for *all*, that they had no *ill Deſign upon* "*the King's Perſon.* That their Intention was to petition the Par-"liament, that *evil Miniſters* might be *puniſhed*, and the People "rendered more happy than of late Years. A few Days after, they "preſented to the Parliament two Petitions, ſetting forth the Grie-"vances of the Nation. Among other Things they prayed that "the Duke of Somerſet might be puniſhed as being the principal "Author of the *Loſs* of Normandy. (AMERICA.) That the "King's Council might be filled with the *Princes of the Blood*, and "other prudent and judicious Perſons, and not with *vicious and* "*profligate Men*, of ill Principles, and Manners, and uncapable of "managing the Affairs of the State." See Rapin's Hiſt. of Eng. vol. i. p. 574. Fol. Edit. It is to be preſumed that no one will dare to deny the Conſtitutionality, as well as Legality of theſe Principles, their Appoſiteneſs to the preſent Times, and the Neceſſity of their being adopted for the Salvation of the Country.

* See Blackſtone's Commentaries, vol. i. pages 161, 213, 243, 252, and vol. iv. pag. 427, for the above References.

‡ Although Lord Bolingbroke was in his Habits of Life, and in Practice, both a Tory and a Jacobite; he was in Speculation, from the early Impreſſions that had been made on his Mind (for he was

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" lective-Body of the People of Great-Britain " delegate, but do not give up; truſt, but do " not alienate their *Right*, and their *Power*; " and cannot be undone by having Beggary, " or Slavery brought upon them, unleſs they " co-operate to their own undoing, and in " one Word betray themſelves. We cannot " therefore ſubſcribe to thoſe two Sayings of " my Lord Bacon, which are quoted to this Ef- " fect: That England can never be undone, " unleſs by Parliaments; and that there is " nothing which a Parliament cannot do." " Great-Britain, according to our preſent Con- " ſtitution, cannot be undone even by Parlia- " ments; for there is ſomething, which a Par- " liament cannot do. *A Parliament cannot annul* " *the Conſtitution*; (Sir William ſays the Par- " liament may alter and create afreſh the " Conſtitution;") and whilſt that is preſerved, " though our Condition may be bad, it cannot " be irretrievably ſo. The Legiſlative is a *ſu-* " *preme*, and may be called in one Senſe an " *abſolute*, but in none an *arbitrary* Power. If " you therefore put ſo extravagant a Caſe as

by Connexion as well as Education a Whig) not only one of the wiſeſt Stateſmen and ableſt Politicians that ever lived, but he was the beſt informed, and moſt comprehenſive Writer on the Engliſh Conſtitution of any that ever wrote on that Subject: Inſomuch ſo, that his Political Works are now the very School of Engliſh Politics, and the Prophecies of the preſent Times; and yet ſuch has been the wretched Uſe made of them, that thoſe very Principles and Meaſures of Government which, if not avoided, he ſhewed to Demonſtration, would prove the certain Ruin and Deſtruction of the Conſtitution, thoſe very Principles and Meaſures the *confidential* Servants of his preſent Majeſty have implicitly adopted, and with unremitting Perſeverance purſued.

"to ſuppoſe the two Houſes of Parliament "concurring to make at once a formal Ceſſion "of their own Rights and Privileges, and of "thoſe of the whole Nation to the Crown, and "aſk who hath the Right and Means to reſiſt "the ſupreme Legiſlative Power; I anſwer the "whole Nation hath the Right, and a People, "who deſerve to enjoy Liberty, will find the "Means. An Attempt of this Kind would "break the *Bargain* between the King and the "Nation, between the *Repreſentative* and *Collec-* "*tive* Body of the People, and would diſſolve "the Conſtitution."* Such is the Doctrine of Lord Bolingbroke.

The next Authority is that of the Reverend Doctor Hurd, now Biſhop of Litchfield and Coventry; and who, in one of his Dialogues, makes Sir J. Maynard to ſay; "I willingly "omit, as ſuperfluous, what in a worſe cauſe "might have been thought of no ſmall Weight, "the expreſs Teſtimony of our ableſt Lawyers "to the *Freedom* of the Conſtitution. I do "not mean only the *Cokes* and *Seldens* of our "Time (though in Point of Authority what "Names can be greater than theirs?) But "thoſe of older, and therefore more reverend "Eſtimation; ſuch as *Glanvil*, *Bracton*, the "Author of *Fleta*, *Thorton*, and *Forteſcue*: Men "the moſt eſteemed and learned in their ſeve- "ral Ages; who *conſtantly* and *uniformly* ſpeak "of the *Engliſh* as a *mixed* and *limited* Form

* See Diſſert. on Part. pag. 270.

"of

" of Government, and even go ſo far as to " ſeek its Origin, where indeed the Origin of " all Governments muſt be ſought, in the " Free-Will and Conſent of the People." His Lordſhip afterwards ſays in a Note, as from himſelf, " By the *free Conſtitution* of the *Engliſh* " Monarchy, every Advocate of Liberty, that " underſtands himſelf, I ſuppoſe means, *that limited Plan of Policy*, by which the ſupreme " Legiſlative Power (including in this general " Term the Power of levying Money) is lodged, " not in the Prince ſingly, but jointly in the " Prince and People; whether the popular " Part of the Conſtitution be denominated " the King's or Kingdom's great Council, as " it was in the proper feudal Times; or laſtly, " the two Houſes of Parliament, as the Style " has now been for ſeveral Ages." *

A third Authority is that of Junius, † who

* See Moral and Political Dial. vol. ii. p. 222, and p. 327. It is impoſſible to ſpeak of this Author, without the greateſt Reverence and Reſpect; without Gratulation to this Country, that, as Preceptor to the Heir apparent of the Crown, he is now obliterating from the Prince's Mind, thoſe ſlaviſh and monkiſh Doctrines, that have been heretofore impreſſed upon it; nor without the moſt earneſt Requeſt to him from all good Men, from every Friend to Liberty, which is the Friendſhip of Humanity, that he would now come forth, and by his Knowledge and Situation, both of which ſet him far above his Fellows, wreſt from the profane Hands of thoſe that Conſtitution, which by them is now about to be offered up in Sacrifice upon the Altars of Ignorance and Tyranny. His Lordſhip has ſaid, " that a right good *Conſtitutional* Hiſtory of England would be the " nobleſt Service that any Man duly qualified for the Execution of " ſuch a Work could render to his Country." His Lordſhip has proved himſelf to be qualified, the Service is only wanting.

† I am extremely concerned to be obliged to call this admirable Writer by a fictitious Name: But at the ſame Time, if he be alive, and has not prevented, in Times ſuch as theſe are, my feeble Ef-

ſays, "The Power of King, Lords, and Commons is not an *arbitrary* Power. They are "the Truſtees, not the Owners of the Eſtate. "The Fee-ſimple is in *us*. They cannot alie-"nate, they cannot waſte. When we ſay "that the Legiſlature is ſupreme, we mean "that it is the higheſt Power known to the "Conſtitution;—that it is the higheſt in "Compariſon with the other ſubordinate "Powers eſtabliſhed by the Laws. In this "Senſe the Word Supreme is relative not "abſolute. The Power of the Legiſlature "is *limited*, not only by the general Rules "of natural Juſtice, and the Welfare of the "Community, but by the *Forms and Principles* "of our particular Conſtitution. If this "Doctrine be not true, we muſt admit that "King, Lords, and Commons have no Rule "to direct their Reſolutions, but merely their "own Will and Pleaſure. They might unite "the legiſlative and executive Power in the "ſame Hands, and diſſolve the Conſtitution. "But I am perſuaded that you will not leave "it to the Choice of ſeven hundred Perſons "notoriouſly corrupted by the Crown, whe-"ther ſeven Millions of their equals ſhall be "Freemen or Slaves." And again: "There "cannot be a Doctrine more fatal to the "Liberty and Property we are contending for "than that, which confounds the Idea of a

forts in the public Service, by the Exerciſe of his ſuperior Talents, Junius deſerves every Curſe and Calamity "that human Fleſh is "Heir to."

*ſupreme*

" *ſupreme* and an *arbitrary* Legiſlature. I need " not point out to you, the fatal Purpoſes to " which it has been, and may be applied. If " we are ſincere in the Political Creed we pro- " feſs, there are many Things, which we " ought to affirm, cannot be done by King, " Lords, and Commons."*

A fourth Authority is that of the great Earl of Chatham, who, in one of thoſe many unparalleled Speeches of his in the Houſe of Lords, ſaid, " Reſiſtance to your Acts was " *neceſſary* as it was *juſt*; and your *vain* Decla- " rations of *the Omnipotence of Parliament*, and " your *imperious* Doctrines of the Neceſſity of " Submiſſion, will be found equally impotent " to convince or enſlave your Fellow-ſubjects " in America; who feel that *Tyranny* whether " *ambitioned* by an *individual Part* of the Legiſ- " lature, or *the Bodies who compoſe it*, it is equally " intolerable to Britiſh Subjects. The Means " of enforcing this *Thraldom* are found to be " as *ridiculous* and *weak* in *Practice*, as they are " *unjuſt in Principle*. †

* See Junius's Letters, vol. i. Ded. p. 4. and vol. ii. p. 353.

† See *Genuine* Abſtracts from two Speeches of the late Earl of Chatham, and his Reply to the Earl of Suffolk, pag. 5. Printed for J. Dodſley, Pall-Mall. It was from theſe Principles that this great Conſtitutionaliſt, on the Occaſion of a Bill being brought into Parliament for declaring the *Independency* of America, ſaid, with Exclamation, in the Houſe of Lords; " Let me ſee that Act of " Parliament that can diſinherit the Prince of Wales of his Heredi- " tary Dominions in America?" Meaning to ſay, that no Act of Parliament could of Right, concede Independency to America. The Crown may treat with America on Terms of Independency, and the Parliament may counſel the Crown to do this; the Crown may negociate a Treaty of Independency with America, and the Parliament

And now I have done with Authorities: For to add would be but to take away, from the Force of thoſe already quoted; and which concluding the Conſiderations meant to be given to the Quotation taken from the Commentaries of Sir William Blackſtone, let us for a Moment turn our Eyes towards the Conſtitutional Hiſtory of this Country, and ſee whether this Doctrine of "the Omnipotency of Parliament" has any Foundation therein; and whether by theſe Means we ſhall not be able to trace out the Origin, as well as find the Reaſon and Occaſion of it.

I believe there is no one, who has in any Degree attended to this Hiſtory, but will readily grant the following *Poſtulata*, namely; that the Conſtitution of England is of a *mixed*

may ratify or reject it: But for an Act of Parliament, in the firſt Inſtance, to abſolve the Subjects of the Crown of their Allegiance, and diſpoſſeſs it of its Territories, is, at leaſt, a Doubt with me. Holland was declared independent, but it was by *Treaty* on a Truce for twelve Years; and not by any *Renunciation* on the Part of Spain. And indeed I am the more confirmed in this Opinion, when I conſider that the Propoſition, made by the Americans themſelves, was (as if aware of the Objection) in the Alternative; "Grant us," ſay they, "our Independency, or, withdraw your Troops;" and on this latter Alternative was Lord Chatham's propoſed Accommodation with America to take Place. It muſt be remembered too, "*that it is the immutable Principle of every State to conſerve an "eternal Right over all thoſe Countries which have ever appertained "to it by a legitimate Title, unleſs their Alienation has been made by "juſt Means, and conformable to univerſal Laws,*" that the Independency of America by Act of Parliament, being the Caſe of revolted Subjects, is not being "made conformable to this Principle:" that the Title of King of France which the King of England aſſumes, without the Poſſeſſion of the Kingdom, is founded upon this *immutable Principle*; and that for the ſame Reaſon, his Majeſty muſt now place in his Crown, the *Feather* of King of America, in the Room of the ineſtimable *Jewel* itſelf, which, by the wicked Hands of his Miniſters, has been torn from it.

Nature,

Nature, conſiſting, in *Matter*, of certain fundamental Laws or Rights *natural* and *reſerved*; the *natural* unalienable by their very Nature, the *reſerved* unalienable by the Compact that eſtabliſhed them; and, in *Form*, of Monarchy, Ariſtocracy, and Democracy; or, in other Words, of King, Lords, and Commons: And that *Liberty* is hence the *Genius* and *pervading Principle* thereof, though not always perceivable in the Adminiſtration of its Government.* I ſay, I am to preſume that theſe are Facts which none will deny; and therefore as they will follow me, without Argument, in the Courſe I mean to take, the Object of my preſent purpoſe is only to mark, in the conciſeſt Manner I can, the ſeveral Periods in which the Adminiſtration of this Government has been under Monarchical, Ariſtocratical, or Democratical Influence: till at length it has fallen under the joint united Tyranny of all, as the laſt unſucceſsful Manœuvre to quench that heavenly Flame of Liberty, which lives, I truſt in God, never to expire in this Conſtitution.

If we look back to the Times of the Saxons, whence we muſt date the Origin of our Conſtitution (for although there were many *Britiſh* Rights or Cuſtoms engrafted upon it, and

* Sir John Fortescue calls it "*a political mixt Government*" in Contradiſtinction to "*a Regal Government*." And Doctor Hurd ſays, "no conſiſtent Account can be given of the Engliſh Government, but on the Suppoſition of *a legal limited Conſtitution*." See Fort. de Lau. Leg. Ang. c. 35. p. 127. and Hurd's Dial. v. ii. p. 126.

which

which do ſtill remain, and although the Britons themſelves were free;* yet the Form of the Conſtitution is certainly of Gothic Inſtitution, and was brought by the Saxons over into England,) we ſhall find that the Conſtitution was, as I have ſtated it to be, of a *mixed* Nature; and its Principle that of Liberty.† We ſhall find that it conſiſted of a King, Thanes or Lords, and Commons under the different Deſcriptions of Frilingi, Cuſtodes Pagani, Ceorles, Villains, &c. to whom ſeperate Rights and Privileges belonged; and that it was of Courſe compoſed of a Monarchy, an Ariſtocracy, and a Democracy: But as the Lands of England were then *allodial*, and as Lands were the only Property, for Commerce was unknown; and as theſe Lands were almoſt

* Nat. Bacon ſays, "The Government of the People of this Nation in their Original, was Democratical, mixt with an Ariſtocracy, "if any Credit be to be given to that little Light of Hiſtory that is "left unto us from thoſe antient Times." See Hiſt. and Pol. Diſc. part i. p. 138.

† It is curious to remark, (becauſe perhaps not obſerved before,) that the Conſtitution and Form of Government eſtabliſhed by our wiſe Forefathers in America, were preciſely, in Principle, the Conſtitution and Form of Government of the Saxon Heptarchy. At the Heptarchy "the Kingdom was cantoned out into certain Pro-"vincial Eſtabliſhments, not under one common Diſpenſation of "Laws, though under the ſame ſovereign Power." For ſo ſays Sir William Blackſtone himſelf. See his Commentaries, vol. iv. p. 403. And juſt ſo was it, in Inſtitution, with America. America "was "cantoned out into certain Provincial Eſtabliſhments, not under "one common Diſpenſation of Laws, though under the ſame ſove-"reign Power." And therefore whilſt theſe Governments were ſtrictly Conſtitutional, deriving their Source from the Origin of our own Government; the modern Attempts of Alteration in them have been as tyrannical in Deſign, as the Arguments of an *Imperium in Imperio*, or *Status in Statu*, as made Uſe of and applied to them, have been falſe and futile both in Fact and Experience.

entirely

entirely in the Hands of the Lords, and the King was not, as he afterwards became, Lord of the Soil; the *Ariſtocracy* was uppermoſt and prevalent in the Adminiſtration of the Government. The Power of the King was merely military;* the executive Power was in the Lords, and the civil or legiſlative in the *commune Concilium Regni*, or in the Lords and Freemen of the Land.† And thus, under the Influence of the *Ariſtocracy*, did the Saxon Government continue; till the Invaſion of William the Norman: When by the vaſt Acceſſion of Property which fell to the Crown from the Slaughter that was made among the Lords at the Battle of Haſtings, by the Inveſtiture of his Norman Followers with the Lands of theſe Lords, under certain Services in Alteration of the before eſtabliſhed Feudal Syſtem, (and which, by the bye, being grievous and burthenſome not even theſe Followers could afterwards endure) and by the Acceſſion of the Weight of his own Norman Dominions to this acquired Property; the Saxon *Ariſtocracy* was ſubdued, and the Standard of the Norman *Monarchy* erected in its Stead: Still however, without any Alteration in the Form, or with-

* The Title of King was originally among the Saxons that of *Dux* or *Leader*; that of *Rex, a regendo*, or King, being the Device of Prieſts afterwards to found their impious and ſelfiſh Doctrine upon of *governing de Jure divino*.

† What the Connexion was between the Lords and the lower Orders of People is known from Glanvil, who ſays, "*Mutua debet* "*eſſe Domini et fidelitatis Connexio, ita quod quantum debet Domino ex* "*Homagio, tantum illi debet Dominus ex Dominio, præter ſolam Re-* "*verentiam.*" Vid. L. ix. c. 4.

out

out deſtroying that Liberty which was the vital Principle of the Conſtitution.

Here then we ſee, the firſt Riſe of Kingly Power in this Government; and the Occaſion of it: But we ſhall find that it was not of long Duration: For as Power, not rightfully obtained, knows no Limits; ſo, in the very Act of its own Extenſion, it becomes limited. And therefore the *Monarchy*, which now, in full Career, had the Reigns of Government in its Hands, was, by Reaſon of thoſe oppreſſive Whips and Spurs which it was wont to make Uſe of in its Courſe, ſtopped ſhort in the Reign of King John, by the returning Power of the *Ariſtocracy*, aided and aſſiſted by the *Democracy*, in bringing back the Conſtitution to its *Saxon* Principles; and by eſtabliſhing it upon that Baſis of *Magna Charta*, on which it has ever ſince ſtood; and from which, I muſt hope, it will never be removed. *

From this Time then to the Reign of Henry VII. is the third Period that occurs to our Obſervation. And here although the *Ariſtocracy* had reaſſumed its Power in the State, by getting rid, through the Means of *Magna Charta*,

* My Intention being merely to mark the Periods in which the Forms of the Conſtitution, or the ſeparate Powers of King, Lords, and Commons had chiefly prevailed in the State; it will not be expected that any other hiſtorical Facts ſhould be related, than what alone has Reference to this Occaſion. And for the ſame Reaſon I ſhall omit to mention the Attempts of the Clergy, in this Period, to add a *fourth* Eſtate to the Conſtitution, by the Creation of themſelves into Lords *ſpiritual* for *temporal* Purpoſes; looking upon this Occurrence as a political Madneſs, or Diſeaſe in the Conſtitution, which Time has ſince well-nigh rid the Government of.

of

of many of thoſe hard feudal Services which William had introduced into the Syſtem of Government, to the almoſt Annihilation of the antient Privileges and original Rights of the People; yet, by the bloody civil Wars that were carried on between the Houſes of York and Lancaſter, by the Neceſſity that the Barons had been under of alienating their Lands, as the Price of their Folly, in Support of the holy War; by the Increaſe of Trade, which, from the Encouragement it met with in the Reign of Edward I, had produced another Species of Property in the Kingdom, and by other leſs conſiderable Circumſtances; the *Democracy* was daily growing in Strength and Power: The leſſer Barons were ſeparated from the greater, and became the Repreſentatives of the landed Intereſt; Boroughs were incorporated, and Burgeſſes were returned to Parliament as the Repreſentatives of the Commercial Intereſt:* But ſtill the Power of the *Ariſtocracy* remained till the Reign of Henry VII, when by the Policy of this Prince, and by the Prerogative now erected and veſted by the *Democracy* in the Crown, as the Means of giving greater Liberty to the People (and not of taking that Liberty away as it was afterwards applied) the *Monarchy* again became, with increaſed Exertions of Influence, the directing Power of the State; and continued ſo

* Thoſe whom the Saxons called *Thanes*, were by the Normans afterwards ſtiled *Barons*, of which there were two Sorts, the *greater* and the *leſſer*.

to

to be to the Reign of Charles I: which forms the fourth Period of our Inquiry. But yet ſo far were theſe Exertions, from quenching that heavenly Flame of Liberty which exiſted in the Conſtitution, that they only ſerved to add Fuel to Fire; till at length the Flame burſt out into a Rage of Dominion, on the Part of the *Democracy*, greater than any that had been ever known before. Happy Rage of Dominion! Happy in Spite of its Exceſſes! For whatever be the Means, *Salus Populi ſuprema Lex eſt*; and if this be the End, the Means are juſtified by the End.

And now the *Democracy* ruled, even without a Competitor; though not, as ſome have conceived, by the Overthrow of the Conſtitution: For Liberty was not to be extinguiſhed, and although there was no Monarch, and notwithſtanding the Houſe of Lords was voted uſeleſs, the *Monarchy* remained, and the *Ariſtocracy* ſtill ſubſiſted. As well might it be ſaid, that when Charles I. thought fit to rule twelve Years without *any Parliament*, that the *Ariſtocracy* and the *Democracy* were then deſtroyed; that Liberty was loſt, and the Conſtitution annihilated: But the Fact was not ſo, in either Caſe. The Adminiſtration of the Government was, in both Caſes, altered by Uſurpation; in the one Caſe for twelve Years, in the other, continuing till the Reſtoration of Charles II, which now marks the fifth Period in the Sequel of our Hiſtory: And when the Conſti-

Conſtitution, like a Spring that had been held, by Force in an unnatural Direction, returned, by its own elaſtic Power to its original Form; but in which it did not long remain: For the Monarchy was now again to be exalted, and indeed actually was ſo, to the very ſame Height that had but juſt before brought its Monarch's Head to the Block: But it was exalted, that its Depreſſion might be the more certain and compleat; for in the very next Reign James II. was depoſed, and the Crown of England placed on the Head of William III: which finiſhes the ſixth Period of my intended Inveſtigation, and brings me to the Æra of the glorious Revolution. An Æra of which the Deſign was, as Lord Bolingbroke tells us, "not "only to ſave us from the Attempts on our "Religion and Liberty, made by King James, "but to ſave us from all other Attempts, "which *had been made*, or *might be made* of the "ſame Tendency; to renew and ſtrengthen "our Conſtitution." An Æra, when, as Sir William Blackſtone ſays, "the Prerogative of "the King was limited by Bounds ſo certain "and notorious, that it is impoſſible he ſhould "exceed them without the Conſent of the "People:" *When*, the Power of the Lords became that of their being *pro Tempore* the actual Repreſentatives of the Nation at large,* of

* Upon the Abdication of James II. there being no Houſe of Commons in Exiſtence, the Lords became the actual Repreſentatives of the People; and took upon themſelves the Adminiſtration of the Government, till the Meeting of the Convention, and the Appointment of the Prince of Orange to ſucceed them in Power.

being

being in future the Mediators between the King and the People, and of rendering Juſtice to both, by oppoſing as well the Encroachments of the Crown upon the Liberties of the Subject, as the Encroachments of the Subject upon the juſt Prerogative of the Crown:* *When*, the Rights of the People were aſſerted, maintained, acknowledged, and defined: And in ſhort, *when*, each Form of the Conſtitution was ſo attempered with the other, as to make Liberty, which had hitherto been, though in vain, the Object of their ſeparate Attempts to deſtroy, the now Object of their united Endeavours to preſerve: Of all which Particulars collectively taken, the good Effects have come ſo perſonally home to every Individual, as well as to the Community in all its great Extent, that it is unneceſſary for me even to allude to them. All I will ſay is, that from this happy Æra, Great-Britain began to riſe in Empire, in Wealth, in Power, in Credit, in Greatneſs of every Deſcription, in Commerce, the Source of all the reſt, and the Guardian of Liberty; and that it continued ſo to do, far above all other States that the Annals of either *antient*, *middle*, or *modern* Hiſtory can boaſt, to the Æra of the Reign

* "There cannot be a greater Soleciſm in Politics, than that of "a Nobility, under monarchical Government, who ſuffer the Liberty "of the Commons to be taken away. In Ariſtocracies, the Nobility "get whatever the Commons loſe, but in Monarchies, the Crown "alone is Gainer; and the *certain* Conſequence of their helping to "enſlave the Commons muſt be that of being enſlaved themſelves at "laſt." See Diſſ. on Part. p. 228.

of George III. which closing the last Period of my historical Journey, whilst it opens a new System of Politics to our View, and, in consequence, our sad Reverse of State, I shall beg Leave to look back for a Moment upon the Ground over which I have just trodden, as leading to that, upon which I am now about to stand.

In the historic Course I have taken, my Design has been to shew, as I proposed to do, the several Periods of our History, in which the different Forms of the Constitution have had the upper Hand, or influencing Power, in the State. I have shewn that, from the Time of the Saxons to the Norman Invasion, the *Aristocracy* was the prevailing Power; that, from the Norman Invasion to the Reign of King John, the *Monarchy* took the Lead, and arbitrarily prevailed in the Government; that, from the Reign of King John to that of Henry VII, the *Aristocracy* again assumed its Power; that, from the Reign of Henry VII, to that of Charles I, the *Monarchy*, assisted by the *Democracy*, recovered its Influence, and again arbitrarily exerted it; that, from the Reign of Charles I, to the Restoration of Charles II, the *Democracy* became alone the ruling Power in the State; that, from the Reign of Charles II, to the Accession of William III, the *Monarchy* recovered its Power, and renewed its arbitrary Measures; and that, from the Revolution to the Æra of George III, the Administration of the Government rested on the settled "*limited*

" *Policy*" of the Conſtitution, whilſt Liberty being " *the informing Principle*," (as Doctor " Hurd calls it) Glory and Grandeur followed.*

I ſay then that this being my Deſign, the Inference to be drawn therefrom is this; that if the *ſeparate* Exertions of the *different* Forms of the Conſtitution were, as, in the *ſeveral* Periods mentioned, they are ſtated to have been; the *Combination* of theſe Forms, upon the Principles laid down by Sir William Blackſtone and others (of " the Omnipotence of " Parliament," of an *arbitrary* and *deſpotic* Power in King, Lords, and Commons to act by the mere Direction of their own Will, ſubject to no Limitations from the fundamental Laws

* " The Hiſtory of *Sparta*," ſays one, " contains very little " elſe, than the Struggles of *one Part* of the Conſtitution againſt " the *other*; for ſometimes the *Kings* laid very deep Deſigns for in- " troducing arbitrary Power; ſometimes the *Nobility* practiſed " againſt their Kings, and either brought them to violent Ends, or " forced them into Baniſhment; and, at laſt, the *Ephori*, under " Colour of promoting Liberty weakened the Foundations of the " State to ſuch a Degree, that it ſunk into Anarchy, and never re- " covered its former Luſtre. The Romans, who copied that Con- " ſtitution in theirs, met with the ſame Fate." It does not appear in either Hiſtory, that there ever was an Union *of all the Forms* of the Conſtitution to obtain that arbitrary Power, for which *each* had ſeparately contended. This Machiavelian Experiment was reſerved for the Annals of the Engliſh Hiſtory in the 18th Century. But it appears from the Hiſtory of Rome " that theſe Struggles made " Way for the perpetual *Dictatorſhip*, and that at laſt all Parties " agreed to repoſe the Power of the Commonwealth in a ſingle Per- " ſon, when the Conſtitution was too weak to ſuſtain it according to " the Antient Forms." Sad Exchange! and yet however ſad, the veſting of the Powers of a *Dictator* in the Crown has been the Language of late in a Britiſh Houſe of Commons, to the Britiſh Nation; and which makes one of two *miniſterial* Objects in View: Either that the People of England ſhall ſubmit to " the Omnipotency of Par- " liament," or, that they ſhall be ſo burdened, galled, and oppreſſed by their Parliaments, as to induce them to do what Rome did, and what Sweden and Denmark have ſince done, " repoſe the Power of " the Commonwealth in a *ſingle* Perſon." May their Views to *come*, like their *paſt* Meaſures be crowned with the ſame Succeſs!

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of the Conſtitution, but *unlimited* "to alter "and create afreſh even the Conſtitution it-"ſelf") muſt derive its Origin from the Date of theſe Principles; and as the Date of theſe Principles is derived from the Æra of the preſent Reign,* ſo the Concluſion, upon the whole, is this; that, to that *arbitrary Power*, againſt the Introduction of which, *ſeparately*, we have been contending from the Saxon Æra to the Æra of George III, *conjunctively*, we muſt now ſubmit; though attended, in this Form, by a State of Slavery, tenfold more oppreſſive, than any other Form could poſſibly inflict. †

So far then have I endeavoured to trace the Origin of this Doctrine. And now the next Subject of Conſideration is the Reaſon and Occaſion of it. It has been obſerved by my Lord Bolingbroke, "that abſolute Power was the "Object of Kings from the Norman Conqueſt "to the Revolution;" and ſo it certainly was: For although the Ariſtocracy and the Demo-

* It is ſaid, that the Subjugation of America, upon the Idea of an Arbitrary Power in Parliament, was planned in the Cabinet of the Princeſs Dowager of Wales; before the Death of George II: but whether this be true or not, is not for me to determine. One Thing however is true; the Plan of the Subjugation of America commenced, with the Power of the Earl of Bute, in the Reign of George III.

† The Duke of Buckingham in his moſt excellent Comedy of the Rehearſal, has a Part therein ſo very *à propos* to the preſent Purpoſe, that however ridiculous it may appear, the Compariſon is worthy of Mention. The Duke makes Bayes to introduce upon the Stage the *Sun*, the *Moon*, and the *Earth*, who all *ſeparately* perform their ſeveral Parts; but Bayes not content with this, makes the *Sun*, *Moon*, and *Earth*, to dance the Hay all together. "Now "the *Sun*, now the *Moon*, now the *Earth*, now all together, ſays "Bayes, *Sun*, *Moon*, and *Earth* dance the Hay." And juſt ſo hath it been in our Farce of State. Now the *Monarchy*, now the *Ariſtocracy*, now the *Democracy*, now altogether, ſays Lord North, *King*, *Lords*, and *Commons* dance the Hay; to the Tune of "Charley "over the Water."

cracy had, at different Times, assumed the Administration of the Government, yet whenever this happened, it always proceeded from the more arbitrary Designs of the Monarchy. And therefore the Limitation of the Monarchy, at the Revolution, became the *only* Object of Contemplation and Settlement. The other Powers of the State were so circumstanced, as to occasion no Apprehensions, individually from them, of any further Attempts towards arbitrary Power; and as to the Doctrine, of an arbitrary Power being vested in the *Legislature* to take away the Rights of the People, no such Idea was entertained or existed: But on the contrary, Parliaments were looked upon as the Protectors of the Liberties of the People, and were adored by the *Whigs* as the great Bulwarks of the Constitution; though, for the same Reason, hated by the *Tories*. * Thus then was the Monarchy the only Power, which it was necessary at this Time to guard against; and this being effectually done, as has been shewn, the Constitution and Government were not

* It may be asked then, what is the Meaning that *Tories* are now the Friends of Parliament, and *Whigs* the Oppofers of them? The Reason is plain. The *inverse* use of Parliaments hath made them so: when Parliaments were *limited* to the *Use* of the Constitution, they belonged to the Whigs; when *unlimited*, to the *Abuse* of it, they became the Property of the Tories: for Tories follow *arbitrary Power*, as *Crows* do *Carrion*, wherever it is to be met with; and are driven in search of it, by the same *blind impulse*, that drives a *Newfoundland Dog* into the Water, after a Stone that he cannot reach. It follows therefore that by Whig and Tory is meant this: A *Whig* is the *Friend* of Liberty, and the *Enemy* of arbitrary Power. A *Tory* is the *Friend* of arbitrary Power, and the *Enemy* of Liberty. And such is the Definition, and specific Difference, of these Parties at this Day; though, from the *Whigs* not perceiving in Time, the Politics of the *Tories* respecting Parliaments, and from their well-grounded Attachment to the Constitution of Parliaments, many of the best, and most respectable Characters, of this Party, became, by

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only then conſidered as aſcertained, and ſettled; but actually continued ſo to be, as I have ſaid before, to the Æra of the preſent Reign; though not without the Introduction of a Principle, as muſt be admitted, which, however neceſſary the Circumſtances of the Times might have rendered it, and although adopted at firſt without any View to arbitrary Power, as will appear hereafter, yet, has ſince proved the fruitful Means of our preſent public Evils: For this Principle, being that of Corruption, became at length to be an acknowledged Principle in the Government; upon which a Syſtem was to be erected, and by which the Adminiſtration of the Government was to be conducted. But as even this *arch Seducer*, this *wicked Serpent*, was found inſufficient of itſelf to violate the *Chaſtity of Liberty*; and now every other Experiment having failed, one other Trial was left: *Force* muſt be uſed, a *Rape* was to be committed, and that *Wolf in Sheep's Cloathing*, that *cloven footed Beaſt*, the Offspring of Corruption, called "*the Omnipotence of Parliament*," was generated, and became the Heir apparent to the forfeited Eſtate, and loſt Patrimony of Prerogative. *

*the Policy of the Court*, hampered by that damnable Hereſy of State, the now *Tory* Doctrine of "the Omnipotence of Parliament."

* It may here be aſked too, how can "the Omnipotence of "Parliament" increaſe the Power of the Crown? The Anſwer is, in Fact, by the Means of Corruption; but, by logical Proof, it ſtand thus:

PROOF.

One of the Emperors of Rome having ſaid that his little Boy of five Years old governed Rome, and being aſked, how that could be, he proved it in this Way;

I govern Rome, ſaid he;
My Wife governs me;

But now I ſhall be told, that, notwithſtanding what has been alleged, this Doctrine is, in Principle, the Doctrine of all Governments; that it is ſo of our Government; that it is cloathed in the Forms of the Conſtitution; and that it has many Acts of Parliament for its Support. To which I reply; that to ſay that this Doctrine is, in Principle, the Doctrine of all *abſolute* Governments, is to ſay, what is abſolutely true: for it is of ſuch Governments the very Principle itſelf. But to ſay that this Doctrine is, in Principle, the Doctrine of a *limited* Government, of a *free* Government, and ſo in Conſequence of our Government; I think, I may preſume to aſſert, that, ſo far as Argument founded on Fact will go, the contrary has been already proved. And now I do not feel myſelf at all averſe from the Examination of this Doctrine, upon the abſtract Ground of the Principles of Government in general; or of our Conſtitution in particular. But, in good Truth, until the Problem be ſolved, how in the Nature of Things, and in Common Senſe, an *arbitrary* Power, under any poſſible Mode, can be ſaid to exiſt in a *free* Government; all Proceſs of Ratiocination is mere *Verba, et præterea nihil*; and the *Dilemma* of the Problem itſelf muſt ſtand in the Stead of Reaſoning.

My little Boy governs my Wife;
*Ergo*, my little Boy governs Rome.

APPLICATION.

The Parliament governs the Kingdom;
The Treaſury governs the Parliament;
The Crown governs the Treaſury;
*Ergo*; the Crown governs the Kingdom.

INFERENCE.

That the Law is the Will of the Prince, declared in Parliament.

However,

However, as it would ſeem that the Theory of this Doctrine has its Dependence principally on the Authority of Sir William Blackſtone, I ſhall hope for his Pardon, if for the Sake of Truth, (and I am ſure, from the perſonal Obligation as well as real Eſteem I ſincerely have both to and for Sir William, it can proceed from no other Motive) I ſhould ſuggeſt, and ſhall endeavour, by a few curſory Obſervations, to ſupport the Suggeſtion, that the Error of this Doctrine ſeems to have ariſen, in Inference, from an Error in the Manner in which he has, in his Commentaries on the Laws of England, laid down and treated the Principles of our Conſtitution.

Theſe Commentaries, in their Dedication to the Queen, announce themſelves to be, "A "View of the Laws and Conſtitution of Eng-"land;" and, of the *Laws*, they are truly ſo, in every Senſe. They have for their Recommendation, Arrangement and Syſtem, the moſt natural and beautiful Diction, with the moſt comprehenſive and beſt choſen Collection of Materials: ſo that as a *juridical* Hiſtory, they may be conſidered as correct and perfect. But as a *Conſtitutional* Hiſtory, the View is ſomewhat different. Here they are imperfect, and, as I have juſt ſuggeſted, erroneous. Of the *Law* itſelf, whilſt the moſt accurate Definition is given, and the moſt elaborate Reaſonings had upon all its Parts, not a Word, of this Kind, is ſaid of the *Conſtitution*. No Definition, not even a ſummary Explanation of it; nay, although the Term *Conſtitution* is to be read almoſt in every Page, *great* as the Word is, it

has not a Place assigned, nor is it to be found, in the *Index*. So far then are the Commentaries imperfect, and in what follows, I think, they are erroneous.

The Principles of the Constitution are so embodied, and confounded with those of the Law, that the *Rights of the People* are made not to arise out of the *Constitution*, but to depend on the *Law*. "The Laws assert our common Rights," says Lord Bolingbroke, "but they do not give "them to us."* Between *civil* and *political* Law, no Distinction whatever is made; when lo! upon this Distinction depends the very Difference between the Law, and the Constitution. *Political* and *civil* Laws, says Baron Montesquieu, "Should be relative to the Nature "and Principle of the actual, or intended Go-"vernment; whether they *form* it, as in the "Case of *political* Laws, or whether they *support* "it, as may be said of *civil* Institutions." Again: "Considered as Members of a Society "that must be properly supported, they have "Laws relative to the *Governours* and the *Go-"verned*; and this we call *politic Law*. They "have also *another Sort* of Laws relating to the "mutual Communication of Citizens; by which "is understood the *civil* Law." Baron Montesquieu next makes an Apology, for not having *separated* the *political* from the *civil* Laws: "For," says he, "I do not pretend to treat of "Laws, but of their Spirit;" which, *è converso*, is the very Reason that this Distinction should have been made in the Commentaries on the Laws of England.† Another great Authority,

* See Diff. on Part. p. 89. † See Spir. of Laws, v. 1. ch. 3.

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in Support of my Opinion, is that of Baron Bielfeld. This Author says, "Considered as "living in a Society that must be maintained, "there must be Laws in the Relation there is "between the *Government* and those that are "*governed*; and these make the *political* or "*public* Law: There are still *others* in the Re-"lation that all the Citizens have among them-"selves, and these make the *civil* Law." He says too, in another Place, "In the most *ex-*"*tensive* Sense the *public* or *political* Law com-"prehends the *reciprocal* Duties between the "*Governors* and the *governed*; that is, from "Sovereigns towards their Subjects, and from "Subjects towards their Sovereigns, and towards "the State of which they are Members. Each "State, each Nation, has therefore its public "Law; the Study of which becomes the more "extensive, and the more difficult in Propor-"tion as the Form of Government is more "complicate. The *public* Law, *or Constitution* "*of England*, for Example, which determines "the Rights and Prerogatives of the King, the "Parliament, and the People, forms a very "extensive Science." *

Now from the Want of this Distinction between the *political* and the *civil* Law, or rather from the total Silence of the Commentaries upon the Subject of the former, those pre-

* See Elements of Erudition, vol. 1. p. 89, and 103. This Science, in order to its Attainment, is very judiciously treated of in the third Volume of these Elements, under the Head of *Statistics*; and to which the Reader is not only referred in particular, but the *Elements* themselves in general, as well as *the Political Institutes* of Baron Bielfield, are worthy the Perusal of every Lover of Learning and Science.

determined,

determined, or *precedent* * Relations, that exiſt between the *Governors* and *governed* of this Kingdom, are made to be the Offspring of the *civil* or *municipal* Law; to be the mere Effects of Legiſlation, and the Acts of the Legiſlature itſelf only: So that, from ſuch Premiſſes, the Concluſion, of an *arbitrary* Right in the Legiſlature, is juſt and natural; and "the Omni-"potence of Parliament" follows as of direct and certain Conſequence: For that Power that *gave*, muſt have a Power to *take away*; and if the Legiſlature *created* the Conſtitution, the Legiſlature muſt of Courſe have a Right "*to* "*change and create it afreſh:*" But how erroneous this Doctrine is, a bare Attention to the Nature of the *political* Law alone, without any other Aid, ſufficiently proves.

The Commentaries ſay, "Now the Rights "that are *commanded* to be obſerved by the "*municipal* Law are of two Sorts;" and then they proceed to convert *Rights* into *Duties*, in order to bring them under the *Command* of the *municipal* Law; † and which otherwiſe could not be done from the very Definition of this Law: for the Definition is, *Lex eſt Sanctio ſancta, jubens honeſta, et prohibens contraria*; which can, by no Means, apply to the *Rights* of the People, though it may to their *Duties*, As for Example: The Trial by Jury is a *Right* of the People: But how is this Right of the

* Sir Francis Bacon ſays, "that *Monarchies* do not ſubſiſt, like "other Governments, by a *precedent* Law; and that Submiſſion to "them is grounded upon Nature;" which proves, according to him, that other Governments do ſubſiſt by a *precedent* Law, and that Submiſſion to them is *not* grounded upon Nature. See Caſe of the *Poſt-nati*. vol. 4. pag. 185.

† See Blackſtone's Comm. v. 1. p. 123.

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People to be ſubjected to this *municipal* Law according to its Definition? It cannot be. Trial by Jury is an *abſolute reſerved* Right, and not a *relative* or *ſocial* Duty. It is *neque honeſtum, neque contrarium.* Beſides, there is no Connexion between this Species of *Law*, and this Species of Right. This Species of *Law*, that is the *municipal* or *civil* Law, has to do with *private Rights.* This Species of *Right* is ſubordinate to that Species of *Law*, which has to do with *public Rights*; namely, the *political* Law. And herein conſiſts both the Error of the Commentaries, and its Solution. The Error is, in making *political* and *civil* Rights *ſynonimous*, and without Diſtinction.* The Solution is, that *political* Law has to do with *public Rights*, *civil* Law with *private* Rights: That *private Rights* are the Objects of Legiſlation: That *public Rights* are the Baſis and Foundation of *private Rights*, the fundamental, unalienable, and unalterable Laws of the Land, originating in Compact; and, whilſt the Conſtitution laſts, holding by the ſame Tenure: That they are the Grounds of the Conſtitution, and the Occaſion of its Form of Government; the Creators of Legiſlators, Legiſlatures, and of Legiſlation; and theſe being of Courſe the Creatures of theſe Creators, the Creatures may not have a Right of Omnipotency over their Creators: But on the contrary, "the *Omnipa-*" *tency* of Parliament," *quoad* theſe *public Rights*, muſt become "the *Subſerviency* of Parliament,"

* *Political*, or *civil* Liberty, ſay the Commentaries, is no other "than natural Liberty ſo far reſtrained, &c.;" ſo that *political* Liberty is *civil* Liberty, and *civil* Liberty *political* Liberty, with out Diſtinction or Difference.

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which is the very Reverſe of what the Commentaries intended to prove; and, in being ſo, ſhews, as if the Conſtitution had been made for the Commentaries, and not the Commentaries for the Conſtitution: As if they had been written *pro Re nata*: Or as if they had been ſubmitted to the Pruning-Knife of the Lord Chief Juſtice of the Court of King's Bench, that they might bear the Fruits of his Politics, and bring forth the Evils that have ariſen from them.

I would now ſeek to excuſe myſelf, for having preſumed to treſpaſs on that Ground, to which the Vinerean Profeſſor of Law might be ſaid to have an *excluſive* Right: But as my Views were to ſave, and not to deſtroy, ſo his Juſtice, I am content to think, will be to pardon, and not to condemn.

Another Argument that has been alluded to is that, of this Doctrine being cloathed in the Forms of the Conſtitution; but the Argument itſelf is the very Objection to the Doctrine: for of all Tyranny, that Tyranny is the worſt, which has the *Formalities* of Law for its Support. Every other Tyranny is the Effect of miſguided and ungoverned Paſſions: this is the Reſult of Deliberation, and even Reaſon is proſtituted to its Purpoſes. The former may find Motives for its Excuſe: the latter is out of the Reach of Abſolution. Lawleſs Tyranny is confeſſedly lawleſs. Legal Tyranny adds Treachery to Tyranny: for it acts in Diſguiſe, and deceives with the Appearance of Truth. But this Argument applies to the ſuperior Baſeneſs of this Tyranny only. The Abſurdity of it is almoſt

almoſt too prepoſterous to mention. Tyranny cloathed in the Forms of the Conſtitution! How irreconcileable the Terms with the Ideas! And how little able to ſtand the Teſt of Examination! Every Body knows how, and in what Manner, one Part of the Conſtitution receives its Form; I mean the Houſe of Commons: that it has no original Juriſdiction or Power of its own: that it is elective, and for a ſtated Term only:* that its Members are the Deputies of the People, appointed to do their Buſineſs in Parliament; and for ſo doing, received, no farther back than the Reign of Henry VIII. the *Wages* of their Conſtituents. And yet no ſooner are forty of theſe Members (for forty conſtitute a Houſe) aſſembled in the holy Chapel of St. Stephen, than a *Right* originates in them, in Conjunction with the King and the Lords, to make Hewers of Wood and Drawers of Water of thoſe very *Electors*, of whom they are themſelves the *Elected* only.† Such is the Abſur-

* The Election of an Houſe of Commons was formerly for one Year, afterwards for three Years, ſince for ſeven. What is next to be the Caſe, reſts on "the Omnipotence of Parliament."

† In Proof of the *former* ſubordinate State of Parliament to the People, and ſo of courſe, in Contradiction to its *preſent* aſſumed State of Omnipotency, Judge Hales ſays; "It is the Law and "Cuſtom of Parliament, that where any new Device is moved on "the King's Behalf in Parliament for his Aid, or the like, the "Commons may anſwer, that this is *a new Device*, and they *dare* "not agree without Conference with their Countries; whereby it "appeareth ſuch Conference is warrantable by the Law and Cuſtom "of Parliament;" and for his Authority, cites Rot. Parl. 13 Ed. III. N. 58, to which I have referred: But this Doctrine not tallying with theſe Times, this Citation is not *now* to be found in the modern Editions of our Rolls. If, when the Taxation of America without Repreſentation was propoſed, the Commons had ſaid "this "is *a new Device*, and we *dare* not agree without Conference with "our Countries," America had ſtill been Part of the Britiſh Empire, and Great Britain not the degraded Kingdom it now is.

See *Hales of Parlm.* p. 13.

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dity of this Doctrine, and yet ſuch the Doctrine is. Had it been ſaid, that the Legiſlature might aſſume ſuch a *Power* to itſelf, but that it could not poſſibly have a *Right* to ſuch a Power; that it might exert and maintain ſuch a *Power* by Force, but that ſuch a Power was *Uſurpation* and *Tyranny*; ſuch a Doctrine as this would have been intelligible, and it would not have been denied: but, on the contrary, it would have been admitted; as, upon this Principle, I mean very readily to admit (as a Matter of Fact) the laſt Argument made uſe of, that this Doctrine has many Acts of Parliament for its Support; and to this End will take the Liberty of citing ſome of theſe Acts myſelf.

The firſt is the Statute of the 21ſt of R. II. c. 16, whereby the whole legiſlative Power of the Parliament was delegated and lodged in this King, with twelve Lords and ſix Commoners, or any ſix of the Lords, and any three of the Commoners.

A ſecond is the Statute of the 11 of Hen. VII. c. 3. whereby Authority was given by the Juſtices of the Peace (without any Trial by a Jury) by their Directions to hear, and determine all Offences againſt any penal Statute then in Force. *

* Upon this Act Dr. Hurd has the following Remarks: "The "Oppreſſions," ſays he, "of Empſon and Dudley, had been found-"ed in a Stretch of Power, uſurped and juſtified on the Principles "of the Civil Law, by which theſe Miſcreants had been enabled "to violate a fundamental part of our Conſtitution, the Way of "*Trial by Juries*. The Effect on the People was dreadful. Ac-"cordingly, in the Entrance of the next Reign, though the *Au-"thority*, by which they had acted, *had even been Parliamentary*, "theſe Creatures of Tyranny were indicted for High Treaſon, were "condemned and executed, for having been inſtrumental in ſub-"verting *Legem Terræ*; and the extorted Statute, under which

A third

A third is the Statute of the 31ſt Hen. VIII. c. 8. which delegated to the King Power to make Laws by his Proclamations, with the Advice of his Council, of equal Authority, and Force, with Acts of Parliament. *

There are, beſides, ſome other Statutes, particularly in the Reign of R. II. to the ſame Effect; but as they are leſs exceptionable, it is unneceſſary to mention them. Theſe may be ſaid to be Caſes in Point, and as ſuch I produce them. But will Sir William Blackſtone, or any other Advocate for "the Omnipotence "of Parliament," ſay; that theſe Statutes were made upon an *actual acknowledged Right* ſubſiſting in the Legiſlature, of making and enacting ſuch Laws? Or rather will they not ſay, what was then ſaid, and what has ever ſince been ſaid, on every Hand; that "theſe Statutes "were *notorious Breaches* and *Violations* of the "*original Conſtitution:* that the fundamental "*Rights* and *Powers* of the two Eſtates of the "Lords and Commons were given up and de-"ſerted: that the Wildneſs of them was ap-"parent: that the Fate of their Makers was "precipitate and fearful: and that may it al-"ways be ſo, with ſuch *Infringers* and ſuch "*Infractions*." And will any one ſay that this was not the Light in which theſe Laws were and are conſidered, nor the Manner in which, *ex debito juſtitiæ*, they ought to be looked upon

"they had hoped to ſhelter themſelves, was, with a *juſt Indignation* "repealed." See Mor. and Polit. Dial. vol. 2. pag. 211.

* Of this Statute, Doctor Hurd ſays; "This *terrible* Act is 31 Hen. VIII. ch. 8. It was repealed in 1 Edw. VI. ch. 12. See "Mor. and Pol. Dial. v. ii, p. 267." What will the Doctor ſay of the Popiſh Canada Act? Hereafter I truſt we ſhall know.

and

and treated? Sir William Blackſtone, I am ſure, will not ſay this. And then, all Controverſy is at an End between him and me; and he and I are agreed. But yet again, if he does not ſay this; what becomes of his "Omnipotence of "Parliament?" For if the Parliament be of *Right* omnipotent, the *Power* exerted by theſe Laws is indiſputable; and the Objections made to them are treaſonable, and deſerving the higheſt Puniſhment.

But now two important *Queſtions* ariſing, to which *Anſwers*, as important, may be expected; I will ſtate the former, and will endeavour to give the latter. The one Queſtion is; What *preſent* Miſchief hath this Doctrine done? The other, Where is its *future* Danger?

To the firſt Queſtion, I anſwer; it hath "divided a Houſe againſt itſelf," *it has ſevered America from Great-Britain.* This is the Miſchief it has done. Theſe are the *Primitiæ* of "the Omnipotence of Parliament," of that Doctrine, which from *Heaven* took its Name; but from *Hell* received its Principles; A Doctrine, which "in the Hour of Inſolence" dared to ſay; "I will tax America without Repre-"ſentation; I will take the Money out of the "Pockets of three Millions of People without "their Conſent, and *of Right will bind them in* "*all Caſes whatſoever*; I will reduce them to "unconditional Submiſſion, and I will bring "them at the Feet of Parliament." Blaſphemous Tyranny! Fatal Miſchief! But this is not all.

It has produced a Congreſs (from the fifteen

*Synods*

*Synods* into which Scotland * is eccleſiaſtically divided) at Edinburgh, debating upon the Subject of Religion, "raiſing," to uſe the Words of Mr. Burke, "the ſame Queſtion on the "*Competence of Legiſlature* to make any Alter-"ation in that Syſtem," ‡ and defying that Omnipotence of Parliament, which had but juſt before ſaid, in the high toned Language of Milton, to America;

——— "Fool, not to think how vain
"Againſt *th' Omnipotent* to riſe in Arms!"
Paradiſe Loſt, book vi. ver. 135, 136.

but which, to Scotland, was as ready to cry out, with the ſame Author;

"Son! thou in whom my Glory I behold
"In full Reſplendence, Heir of all my Might,
"Nearly it now concerns us *to be ſure*
"*Of our Omnipotence!*" Par. Loſt, b. v. ver. 719, &c.

This too hath this Doctrine done. "And "yet more fatal Tidings ſtill await our Ears."

It hath raiſed a gallant Army of forty-two thouſand Men in Ireland, who, wiſely foreſeeing that "the Omnipotency of Parliament," from its very Definition, could not be *confined* to America, were prepared even with *Omnipo-*

* The mention of Scotland reminds me to ſay, that Sir William Blackſtone having produced the Act of Union as a Proof of "the "Omnipotency of Parliament," "the Omnipotency of Parliament" might be proved by a Repeal of the *fundamental* Articles of the Union. But this was not the Senſe of the Reign in which the Act of Union paſſed. For upon the Queſtion in the Houſe of Lords, whether the Peers of Scotland ſhould ſit by *Election* or by *Deſcent*, the Debate turned entirely upon this Diſtinction; "which of the "Articles of the Union were *fundamental*, and not *alterable*;" and which were otherwiſe. See Tind. Cont. of Rap. vol. 2. p. 238.

‡ See Mr. Burke's Anſwer, to the Letter of Mr. Pat. Bowie, one of the Members of this Congreſs, in the Edinburgh Magazine for March, 1779.

 *tency*

*tency* to contend. But Tyranny is ever cowardly. And now our "Palinurus nodding at the Helm," to avoid *Scylla*, runs upon *Charybdis*; * and gives the *thouſandth* Mark, and *damning* Proof of himſelf, that;

"Dum vitant Stulti Vitia in contraria currunt."

Hor. Sat. lib. i. v. 123.

This is the Miſchief of this Doctrine, and this, with much more, it hath already done. I forbear to mention the Fears, the Apprehenſions, the Diſtruſts, the Heart-burnings, the Dangers, the Loſſes, the Difficulties, and Diſtreſſes it hath brought down upon, and occaſioned to, his Majeſty's uſeful, faithful, and loyal Subjects in the Weſt-Indies. I omit to take Notice of the Broils, the Heats, and the civil Diſſentions it hath ſown in this Country. For this were but to heap *Pelion* upon *Oſſa*, whilſt enough remains to cruſh the *infernal Miniſters* of this Doctrine to Atoms, though their

* What is here ſaid muſt be received, as not intending to expreſs the leaſt Diſapprobation of thoſe Advantages, which Ireland has received from this Country: On the contrary, there being ſtill other Benefits to which Ireland is juſtly entitled, and without which thoſe already granted will be rendered not ſo beneficial, I ſincerely hope ſhe may obtain them. But what is here ſaid is meant to ſhew, how *daſtardly* and *unprincipled* that Miniſter muſt be, who, becauſe the Danger is at a Diſtance, ſpends forty Millions of Engliſh Treaſure, and ſpills the Blood of thirty Thouſand of his Majeſty's Subjects, to obtain *that* in America, *which*, becauſe the Danger is near, he yields up, and, with his own Hands, makes a Proffer of to Ireland. And can a ſtronger Picture of *Injuſtice*, flowing from that Source whence *Juſtice* ſhould iſſue, be painted, than this Repreſentation affords! But let it be a Leſſon of Caution to the good People of Ireland, how they truſt this *Weathercock* of a Miniſter: For Ireland *diſarmed*, Courage returns; and with it "the Omnipotence of Parliament" returning, the Advice of Alexander Sforza, the Italian, to his Ally Lewis 11th of France, was, "Agree with your Enemies upon any "Conditions, and then find the Opportunity to cut their Throats;" and ſo the *Acts* of To-day may be *repealed* To-morrow.

Shoulders,

Shoulders, like thoſe of Atlas, were made to ſupport the Burden of the *Earth*.

And therefore I proceed to the ſecond Queſtion propoſed, Where is its *future* Danger? And this too I will anſwer. The Danger is, that with this Doctrine ſo held to be the Doctrine of the Conſtitution, *a corrupted Majority of Parliament* may *conſtitutionally* make the King of a *limited* Monarchy, a *legal* Deſpot. ‡ We are told, that "what Parliament doth, no "Authority upon Earth can undo." This then being done, where is the Remedy? Sir William Blackſtone tells us, "the Remedy is "to be ſought, when the Evil comes. To "prevent it would be an Act of Indecency to-"wards Government." "For the Suppoſition "of Law is, that neither the King, nor either "Houſe of Parliament (collectively taken) *is* "*capable of doing wrong*." * And if ever the Evil unfortunately arrives, "the Prudence of "the Times muſt provide new Remedies upon

‡ If our Princes, on Conviction, that it was not only a vain, but a deſperate Undertaking, to wreſtle with Parliaments, ſhould find it expedient to compromiſe the Affair with them, and agree to *divide* the Commonwealth *between them*, would not Parliaments themſelves become a Grievance? Would not our Repreſentatives become our Maſters? Would not their Conſtituents become their Slaves? Thus, if the governing *without* a Parliament was juſtly the Object of our Terror; if the governing *with* a Parliament was, *as juſtly*, the Object of our Wiſhes; the governing *by* a Parliament would be an infallible Method, not only to compaſs, but give a Sanction to our Ruin. With Regard to the firſt of theſe Governments, our Terrors have long ſlumbered: For while we *ſo freely give*, why ſhould the Sovereign take? And with Regard to the laſt — *Hinc illæ Lachrymæ!* See Uſe and Abuſe of Parliaments, v. 2. p. 714.

* I had imagined, and from Sir William Blackſtone too, that this Attribute of Perfection belonged only to the *Perſon* of the King. But now I begin to feel a little Ray of Divinity about myſelf, and to think that, as a *Member of the Legiſlature*, I am as incapable of *doing wrong*, as the King. See Black. Comm. vol. i. p. 244.

"new Emergencies." And ſo I think myſelf: For the Evil is arrived, and therefore the Prudence of the Times muſt find *a new Remedy* upon *a new Emergency*. And which ſhews too, what I undertook to prove, that "the Omni-"potency of Parliament," as a *conſtitutional* Doctrine, is "a new Emergency," originating in the Reign of George III. and requiring "a "new Remedy." But what if no Remedy can be found? Why then, we ſhall be told that "what we cannot *cure* we muſt *endure*," and that we muſt take to ourſelves, what has been called, "*the Comfort of the Inquiſition:*" *We muſt bear the Evil with Patience.* †

But why ſeek a Remedy at all? For where is the Evil? Admit the Doctrine, and the Evil is none. It is the Doctrine of the Conſtitution. And how can the People complain of that Doctrine, which the People themſelves thought fit, in their Conſtitution, to ordain?

But did I ſay that this Doctrine, *ſo held* to be the Doctrine of the Conſtitution, *may* make the King a *legal* Deſpot? I *will* ſay that it *has already* made the King a *legal* Deſpot, greater than any Deſpot in all Europe; I was about to ſay *greater* than in all the World: But as great as any in the World, I do aſſert and will maintain.

When the War with America was lighted up by this Country in that, the Pretence of it was to force Submiſſion to the Parliamentary Rights of England. It was therefore *a War of*

† An innocent Italian being once condemned to the Inquiſition, he ſaid to his Father Confeſſor; "*Padre mio, che s'ha da fare?*" Father, what muſt I do? To which the Father anſwered; "*Figlio* "*mio, biſogna aver Pazienza.*" Son, you muſt bear it *patiently*. And whence, this fatherly Advice is called, the *inquiſitorial Comfort*, or *the Comfort of the Inquiſition*.

*Parliament*,

*Parliament*, the Cauſe of it being a Parliamentary Cauſe. But what Proof did Parliament give of its being ſo? Or rather what Proof did Parliament not give to ſhew that this was nothing but a mere Pretence? I will tell you in a Word. They paſſed the Quebec-Act: Of which before I ſpeak, I truſt, "the Omnipo-"tency itſelf of Parliament" will allow, that if there be any one Thing which Parliament cannot do, it is that of *diveſting* itſelf of its own *legiſlative* Authority. And yet this very Quebec-Act, not only ſurrenders up the *legiſlative* Authority of Parliament, in and over all Canada, marked out, for this ſpecial Purpoſe, in Extent determinable only by the Lines and Circles of Aſtronomical Geography, into the Hands of the King; but places the *executive* and *judiciary* Powers there alſo. And if there be any Degree of *Deſpotiſm* greater and higher than that, where the *legiſlative*, the *executive*, and the *judiciary* Powers meet and unite in one and the ſame Perſon; I have failed in what I ſo boldly took upon myſelf to aſſert and maintain.

Where then is the Difference between this Act and thoſe of the 21ſt of R. II. c. 16, and the 31ſt of Hen. VIII. ch. 8. (which laſt Doctor Hurd calls "*a terrible Act*") except in the paramount Nefariouſneſs of the *former* over the *latter*? They all give up the *legiſlative* Authority of Parliament to the Crown: But the Act of R. II. has the Modeſty, in ſo doing, to join ſome of the Lords, and ſome of the Commons, with the King; and the Act of Hen. VIII. ſuperadds, "with the Advice of the Council:"

 whereas

whereas the Quebec-Act, beſides the *judiciary* Power, the *executive* being of Right in the Crown, veſts an *excluſive* Right to the *legiſlative* Power there in the King alone; and is called *a conſtitutional Act:* whilſt the others, when paſſed, and for ever after, till repealed, were held *notorious Violations* of the Conſtitution, and Acts of Tyranny. But this is not the only Act in which this Madneſs of Power has been exerted. There is not one of thoſe many coercive Acts that have paſſed in the Adminiſtration of the preſent Miniſter reſpecting America, in which you do not find the very Roots, not only of our Conſtitution, but of every Government, *even of Humanity itſelf*, * torn from their native Embraces, and burnt up by the Blaſt of his unnatural Power. Not an Act out of which Articles of Impeachment, upon Articles of Impeachment, do not ariſe; † and for which if he does not ſuffer in this World (for his avowed Oſtenſibility will not protect him) Juſtice is but fled to the next, that his Puniſhment may be eternal hereafter. ‡

* See the Fiſhery-Bill, or *Starvation-Act* as it is called, κατ' Ἐξοχήν, where the *Innocent* are involved with the *Guilty*, and "the Sins of "the Father viſited upon the Children unto the third and fourth "Generations."

† Let it be remembered, that one of the Articles of Impeachment againſt the Earl of Clarendon was; "That he introduced *an arbi-* "*trary Government* in his Majeſty's foreign Plantations."

See Clarendon's Tracts, p. 25.

‡ It may be enquired how, under ſuch Circumſtances, has this Miniſter been able to find Support? To which the Anſwer is; by the following Means. In the firſt Place, by a Waſte and Diſſipation of the Public Money, exceeding the Bounds of all *Credit*; in every Senſe of the Word. In the next, by the Adoption, and moſt ready Uſe, of a *favourite* Maxim in the Politics of Machiavel, namely, "to conceal every Appearance of *Cunning*, and to deceive "under the Guiſe of *Candour* and *good Faith*." But laſtly, and principally, by becoming the adopted *God-father* of *the old Cocoa-Tree-Club, of living Fame*; and to whom, *God-father-like*, he pro-

I have

I have now done with what I had to offer in Addition to that *very, very* important Subject, "the Doctrine of the Omnipotence of Parliament;" and here ending my Endeavours to point out to you the Source of our preſent political Diſtractions, their propoſed Remedy and Redreſs become the next Object of your Conſideration. And as by the *former*, my Deſign has been to prove, that this Doctrine of "the Omnipotence of Parliament" has been not only the Source, but the *unconſtitutional* Source of our preſent political Diſtractions; ſo, by the *latter*, the ſetting aſide that Doctrine, is, in the very Act of its Removal, both the Cure of the Evil, and the Remedy propoſed. But of this briefly in Detail.

I have obſerved, that a Principle at the Time of the Revolution was introduced, which afterwards became an acknowledged Principle in the

miſed and vowed three Things in their Name: *Firſt*, that the Parliament ſhould be omnipotent; whereby, although they, *in themſelves*, would become the *Vaſſals* of the Crown; *of themſelves*, they would be the *Tyrants* of the People: *Secondly*, that a Revenue ſhould be procured from America, in order to eaſe them of the Burthen of the Land-Tax: And *thirdly*, that Trade ſhould be deſtroyed: For Tories hate Trade, as Oil does Vinegar; they never mix, as witneſs, the four laſt Years of Queen Anne's Reign; and for good Reaſon: Trade begets Wealth, Wealth procures Independence, Independence protects Liberty; and Tories, in their very Definition, are the Enemies of Liberty. It is however ſaid, that there is now a great Miſunderſtanding between this *God-father* and his *God-children*; and which is likely to bring *an old Houſe* about his Ears. The *God-children*, it ſeems, complain, that out of the *three* Things promiſed and vowed in their Name, God-father-like, only *one* has been performed; to wit, *the Deſtruction of Trade*. And now Experience hath taught them, that the Deſtruction of Trade was lowering the Price of their Lands, leſſening the Value of their Rents, rendering unſaleable their Home Commodities and Manufactures, throwing the Poor and the unemployed upon their Hands to maintain, and, in ſhort, making abſolute Dupes of them. What a Pity, as the only Dupes, theſe Tories had not been the only Sufferers!

Government, upon which a Syſtem was to be erected; and by which the Adminiſtration of the Government was to be carried on: And that this Principle was, *Corruption.* But this will require ſome little further Explanation. And here I will ſay, that although Corruption, *as a Syſtem*, * might take its Date from the Epoch of the Revolution; yet the Corruption of thoſe Days, and from that Time to the Demiſe of George II, was as different in Aim, and View, to the preſent Object of Corruption, as any two Things can poſſibly be. The Corruption of the Reign of King William, I was almoſt about to ſay, was a *laudable* Corruption; and indeed as far as *wicked* Means can be juſtified by a *good* End, it was laudable: But that it was a *neceſſary* Corruption, and to the full as good in Eſſence, as the Perſons for whoſe Uſe it was deviſed, no Friend to this Country will deny. An *unworthy* King had been driven out of the Kingdom, and if he had taken his *Unworthies* along with him, there had been no Need of Corruption; and Corruption had not exiſted: But inſtead of this, he left behind him ſuch Tribes of Jacobites, Tories, and Prieſts, ſo numerous and powerful in Oppoſition to the then Settlement; that as to appeaſe the wicked Loyalty of theſe Wretches, (and who had been otherwiſe in Rebellion to Liberty) a wicked Sacrifice to Mammon

* It is certain that Corruption was practiſed before the Time of the Revolution; and it is ſaid, by Lord Bolingbroke, that "the "Expedient of corrupting Parliaments began under the Admi- "niſtration of that boiſterous, overbearing, dangerous Miniſter "*Clifford.*" But as "the neceſſary Supports of ſuch Means were "not yet acquired," to uſe the Words of the ſame noble Writer; ſo is it as certain, that Corruption was not, before the Revolution, reduced into a Syſtem; nor conſidered, as it is now, the ruling Principle of our Government.

was

was the only Expedient; ſo, to appeaſe this Loyalty was of this Sacrifice the only View. And as this Neceſſity continued, of which the Rebellions of 15 and 45 are flagrant Proofs, to the Period of Demiſe mentioned; ſo again, farther than this Neceſſity gave Occaſion to Corruption, Corruption had no Object. For will any one ſay, that arbitray Power was the Object of the Reign of William III? Was it of Queen Anne's Reign?* Was it the View of the Reign of George I? The Hiſtories of thoſe Times do not tell me ſo. Was it of George II? His Fame is ſtill alive, and daily Compariſons ſerve but to make it live for ever. What then was the Object of Corruption? I have already ſaid: to ſtop the Mouths of the diſcontented; to prevent Rebellions, which, however, it could not effect; to ſave, and not to murder the Conſtitution.

But let us turn our Eyes to the preſent Times: to the preſent Reign: to that Reign in which, no one Reaſon, that gave Occaſion to Corruption in the former Reigns, exiſts. No Controverſy about hereditary Right: no Pretender to the Crown, or next to none: no German Prince upon the Throne: but a Briton, as I am taught to ſay; though his Majeſty was born in England.† And let us aſk what is the Object of Corruption *now?*

* The Tories of this Reign, when in Power, made one deſperate Puſh to bring back the Stuart Family; and to place the then Pretender on the Throne: but this was no more than the convulſive Agonies of their dying Tyranny, at that Time, in this Country; and as to arbitrary Power, that was only *in Ordine ad*, in Caſe of Succeſs, and not the View of the Reign itſelf.

† If his Majeſty had been born in Wales, or in Scotland, or *before* the Conqueſt of the Anglo-Saxons, he had been born a *Briton*: But being born *ſince* the Conqueſt of the Anglo-Saxons, and in *England*, as this Country has ever ſince been called, it would ſeem as if his Majeſty had been born an *Engliſhman*.

Look

Look to that "absolute *despotic* Power which "must in all Governments reside somewhere:" Look to *arbitrary* Power in a *free* State: Look to "the Omnipotence of Parliament," and see the Object *there*; "*robed* in Divinity, *majestically* "sweet," with the *Bawd* Corruption *pimping* for the Embrace. Such is Corruption's Object now, and this the Difference in its Aim and View. Here too is the Evil, in its Means and End; but where the Remedy is, is now the Subject of Inquiry.

Perceiving, as many zealous and worthy Patriots have done, the Ruin and Destruction which the Male-administration of our Government have been headlong driving this Country into, Remedies for Reformation have not been wanting in Proposal. A *Place and Pension Act* has been thought a fit Expedient, *short Parliaments* have been repeatedly called for, and *a more equal and adequate Representation of the People* required. *

* This Proposition of "a more equal and adequate Representation "of the People" is, as it would seem, founded upon the same Mistake of the Nature of Representation, that has led our puny Politicians of this Reign into that absurd Distinction, and still more absurd Reasoning concerning a *real* and *virtual* Representation in Parliament. The Mistake is, that *Persons* or the *People* are the *Objects* of Representation: Whereas the *Fact* is, that *Property* is the *Object* of Representation, and not *the People*. The Members for Counties are the Representatives of the *landed Interest*, and not the Representatives of the Persons by whom they are elected, but of the *landed Property* of those Persons, and through them *of all the landed Property* in the Kingdom. Just so the Members for Cities and Boroughs are the Representatives of the *monied* or *trading* Interest of the Kingdom at large, and not of the *Persons* of the Pot-wollopers or Chimney-sweepers who may perhaps be their Electors. If therefore on the one Hand the Representation of the landed Interest is inadequate, that Representation must be made good in Proportion to the Quantity of Land that is occupied, and not in Proportion to the Number of its Occupiers: So on the other Hand, if the Representation of the monied or trading Interest be inadequate, this Representation must be made good in Proportion to the increased Quantum in both, and not in Proportion to the increased Number of monied Men and Traders.

Each

Each excellent in itſelf, all uſeful, and proper. But viewing this Subject in the Light I have juſt thrown it, reflecting that what Corruption was, Corruption, now, is not; may it not be a Queſtion, Whether theſe Remedies, looking as they ſeemingly do, to the Prevention of Corruption only, would, under theſe Circumſtances, be found fully adequate to the Reformation wanted? Will they not be *Palliatives*, inſtead of *Specifics*? And although they may *mend*, is it ſure that they will *cure* the Evil? For myſelf, I muſt confeſs, theſe are my Doubts; and I will ſtate my Reaſons for them.

I have ſaid, that theſe Remedies look, ſeemingly, to the Prevention of Corruption only; and if Corruption was itſelf the Evil, the Prevention of Corruption was the Cure of the Evil: But Corruption is not itſelf the Evil; it is in order to the Evil. The Evil is arbitrary Power. Corruption is the Handmaid to arbitrary Power. It is,

And thus it is that the whole Property of the Kingdom, and of Courſe its whole Intereſt, which muſt conſiſt either of Land or Matters of Trade, being repreſented, the whole Kingdom is repreſented, though it may not be adequately ſo; the Members of Counties being the Repreſentatives of all the Land of England, for the Intereſt of that Land, whilſt the Members of Cities and Boroughs are the Repreſentatives of all the Money and Trade of England to the ſame End. Hence it was that Lord Camden, in his great Wiſdom, has ſaid, "That there was not a Blade of Graſs in all England that was "not repreſented." And why? Becauſe the Intereſt of that Land whence the Graſs grows, and not the Owners of that Graſs, was the Object of Repreſentation. What are the Members of the two Univerſities the Repreſentatives of? Not of the Students, for they are already repreſented either in the landed or trading Intereſt: but they are the Repreſentatives of a ſuppoſed Property in *Literature*, and the Protectors of the Rights thereunto belonging. In the Reign of William the Norman, all the Lands of the Kingdom, which was the only Property, there being then no Commerce, were in the Poſſeſſion of Seven Hundred People only; and therefore they, in their *collective* Capacities, not only compoſed the whole Legiſlature, but engroſſed the whole civil Authority of the Kingdom into their Hands.

as

as I have ſaid before, the *Bawd*, the *Procureſs*, or the *Pimp*, of arbitrary Power: But it is not arbitrary Power *itſelf*. It is the Means to an End; but not the End *itſelf*. Arbitrary Power is the End, Corruption the Means to that End. But it may be ſaid, that to remove the Means is to take away the End; and if Corruption were the *only Means* to arrive at arbitrary Power, the Aſſertion had been true. But to the ſame End, there are many Means; and ſo is it in the preſent Caſe. As for Example. Let theſe Remedies do away Corruption *entirely*, ſuffer *arbitrary* Power to remain as a *conſtitutional* Doctrine, leave the Adminiſtration of the Government in the Hands of Tories; and arbitrary Power follows in Adoption *upon Principle*, as ſurely as the Means of Corruption would have procured it. Hence therefore it is plain, that to take away the Means, and to leave the End, is not to perform the Cure: For *Principle* will ſupply the Place of Corruption. Whereas to take away the End, which is arbitrary Power, not only the Means of Corruption are done away; but *all other Means* to that End muſt inevitably periſh with it.

Of theſe Remedies then, theſe are my Ideas. My Objections are not to their Propriety, but to their Inſufficiency. The one I have endeavoured to prove, the other I have acknowledged. If therefore I am miſtaken, my Miſtake is not wilful; and my Error pardonable. I will add too, that even the Inſufficiency of theſe Remedies had not been ſuggeſted by me, without conceiving that ſome Plan of Reformation, more pointed to the Purpoſe, might be adopted; for any Remedy is better than none, and to find Fault, without

attempting

attempting to mend, is to play that Part of a Critic, which I neither know, nor deſire to learn.

It remains therefore, that the Plan of Reformation, to which I have alluded, be now ſubmitted to your Cenſure or Adoption, as it may appear to merit the one, or deſerve the other. And here, however great my Anxiety is for the Salvation of the Conſtitution of this Country, however willing to adopt any Meaſure whatever to this End, even that of Reſiſtance itſelf; (I mean ſuch Reſiſtance as the Conſtitution admits) if the Propoſition which I had to make was unſupported by any other Authority than that of my own, my *mental* Courage (for the Courage of the Heart is not to be parted with in Times ſuch as theſe are) would fail me in the Attempt. But when I conſider that what I have to offer is not only founded on the Authority, and eſtabliſhed by a Precedent of the Conſtitution, but is ſupported by *Reaſons*, ſo wiſe, ſo prudent, ſo unexceptionable, and ſo concluſive, *that are not my own*; Fear is converted into Fortitude, and Confidence ſupplies the Place of Doubt.

Standing therefore upon its own Baſis, and in three Words, the Plan is this; *Settle your Conſtitution.* And Reformation ſucceeds,

"*Velut Unda ſupervenit Undam.*"

This is the Beginning, this the Middle, and this the End of Redreſs. And let your firſt Monitor be that of *Shame. Shame!* that in an enlightened Country, in a Country whoſe *Government* is ſubjected to a *Conſtitution*, and in a Country where, although the *Term* is in the Mouth of every Body, the *Conſtitution itſelf* (as if by the Deſigns of *the wicked Few*) is to be wrapped up in

Clouds

Clouds of myſterious Darkneſs; ſo little known, that no two Perſons can agree in their Ideas upon the Subject, always undefined, ever abuſed, and of late ſo perverted, ſhocking to relate! as to have it repeatedly declared even from the high Authority of the Throne itſelf, that Taxation without Repreſentation, and of Courſe "the "Omnipotence of Parliament" is a *conſtitutional* Doctrine, to be maintained by the Blood and Treaſure of England. A Declaration that annihilates the very Idea of a Conſtitution, and, whilſt it converts *Government* by *Conſtitution* into *Government* by *Will*, lays the Axe at once to the Root of the Tree, and *Liberty* is no more.*

* In all other Reigns when any *novel* Meaſure of State was to be adopted, the Legality of ſuch Meaſure was to be decided, by the Opinions of the Twelve Judges; and then the Judges were the Objects of Bribery and Corruption. When Charles I. levied Ship-money, he bribed the Judges to ſay, that he had a Right to do ſo. Why then was not the *novel* Meaſure of taxing America, in order to raiſe a Revenue for this Country, referred to the Judges of our Days? The Reaſon is obvious: *Thoſe* were the Days of Prerogative: *Theſe* are the Days of "the Omnipotence of Parliament;" and ſo Corruption hath changed its Ground. When Prerogative was oppoſed to Law, the Judges were the neceſſary Tools of Government. To miſconſtrue, miſapply, and pervert the Law was almoſt *profeſſional* amongſt them; and this was the Channel through which Corruption paſſed. But now that "the ſtern Commands of "Prerogative have yielded to the milder Voice of Influence," as Sir William Blackſtone *well* expreſſes a very *bad* Idea, Prerogative is ſwallowed up in the Law, "the Omnipotence of Parliament" ſucceeds, and Corruption ſtains the Fountain Head. *Then* were the Judges dependent on the Crown: *Now* the Statute of the 1ſt of of Geo. III. c. 23, hath ſet them free. And why? Not for the chaſte and pure Motives that have been aſcribed to that Statute, but for the Reaſon that Corruption hath changed its Ground: Not becauſe Juſtice ſhould be incorrupt, but becauſe Legiſlation may be corrupt. And therefore as with the Judges no Temptation to Corruption is left, and with Government, through them, no Neceſſity for it; ſo the Fact is, that when any *novel* Meaſure is now to be adopted, in *Vulcan's Shop*, a *dead* Majority of *living* Cyclops are always ready, with the Hammers of Corruption in their Hands, to forge into any Form the *Thunderbolts* of *Jupiter* for *omnipotent* Uſe.

Here

Here then is your Remedy, take it, and for *Shame* make Uſe of it; for ſomething *more* than *Shame* adopt it: For in a Matter of this national Magnitude, of this *firſt* Importance to Society, Ignorance is Criminality, and Want of Certainty, Reproach.*

But now the Queſtion that ariſes is, in what Manner is this Remedy to be obtained? For although it may be deſireable in *Speculation*, in *Practice* it may prove unattainable. But in this, as in the former Propoſition, the Proof lying in the Propoſition itſelf; the Propoſition is, briefly this: Obtain it by an Act of your own Legiſlature: by an Act *for Uniformity in the State*, declaratory of the Conſtitution, and of thoſe *fundamental* and *irrevocable* Laws upon which the Adminiſtration of the Government is built, and by which it is to be directed. And ſuch, both in *Matter* and *Manner*, is the Plan of Reformation propoſed. A Plan no leſs eaſy, plain, practicable, adequate to the End, and ſure in Effect; than *conſtitutionally* ſupported by the *Authority*, the *Precedent*, and *Reaſons*, which I have already alluded to: and to which it would be now neceſſary for me more particularty to advert, if the very Mention of *Uniformity in the State* did not, in the Inſtant, bring to every Mind the already obtained *Uniformity in the Church*. An Authority and Precedent, preciſely in Point; and not only ſo, but who is he that, in approving the *latter*, does not ſee ten thouſand ſtronger Reaſons for adopting the *former*?

* If the *Collective* Body adopt this Remedy, and the *Legiſlative* Body refuſe to execute it, a real Proof of "the Omnipotence of "Parliament" will be given.

*former*? Shall it be ſaid that the Church, *as eſtabliſhed by the State*, is better worth preſerving, than the State itſelf? Shall it be ſaid that the Church is wiſer than the State? † Or that Churchmen are more wary and provident even of their *temporal* Intereſt than Stateſmen are? Shall *Thirty-nine* Articles, the *Entities* of metaphyſical *Non-entity*, in ſome Reſpects, ſtaggering the Faith even of the Faithful, and in others, ſurpaſſing all human Underſtanding; ſhall theſe be Fundamentals for Uniformity, for Faith and Practice in the State? And ſhall the *Rights*, *Liberties*, and *Privileges* of the State, the Offſpring of Common Senſe, founded on Matter of Fact, knowable, and eſſential to be known by all, be hid in Obſcurity, and left in Uncertainty, nay even in the Jeopardy of Deſtruction by the very State to which they belong? To the *former*, Objections may be raiſed. Many may ſay, as many do; I do not deſire to partake of the Rights of your Church. I do not underſtand them. I will not accept them. But to the *latter*, where can the Pretence of Objection lie? Will any Man ſay, I do not deſire to be free. I do not wiſh to enjoy the Liberties of Engliſhmen. I do not chooſe to ſee them ſecured. I had rather be a Slave. And ſo he who objects to Uniformity in the State muſt ſay. But I am reaſoning upon a Subject which I have already referred, for its Support, to the *Reaſons* of another; and which rendering any Arguments that I can ſug-

† There was a Time when the Church was wiſer than the State, for there was a Time when the Church could read, and the State could not; and this may eaſily account *for Uniformity* in one, and not in the other. But now that *both* can read the beſt *Privilegium Clericale* we can have, is the *Benefit* of their Example *for Uniformity*.

geſt

geſt ſuperfluous, and unneceſſary, I have only to direct the Reader to "REASONS *for Uniformity in the State*," by Roger Acherley, Eſq; being a Supplement to that moſt admirable Work of his, "*the Britannic Conſtitution.*" A Work, in the whole, full of Inſtruction for the preſent Moment.* And now, whilſt I reſt ſatisfied, that no Argument whatever, except that great Argument of State, the *Argumentum baculinum*, can, in Oppoſition to theſe *Reaſons*, have any Weight, Force, or Effect; ſo in concluſion of the Subject,

* This excellent Author ſays, "The Deſign of this Supplement "is, to unite the two contending Parties of *Whigs* and *Tories*, in "the true Notion of the Conſtitution of the Britiſh Kingdom and "Government, as the only expedient to pull up by the Roots all "Seditions, Tumults, treaſonable Conſpiracies, Rebellions, and "even Party Diſtinctions, except that one, viz. *Of thoſe who are for "the Britiſh Conſtitution, and thoſe who are againſt it, being a Diſ-"tinction that ought to be perpetual:* Which deſired End can never "be effected, *without an Act for Uniformity*, and for that Purpoſe "to ſhew, &c."

Again: "The Inſecurity or Infirmity of the Conſtitution in the "State, ariſeth from the Want of *Uniformity* in Mens Minds, *and "for Want of the People's knowing it*, and from their Diſputations "and Queſtions about *what are*, and *what are not* the *fundamental "Parts* of the Conſtitution."

He likewiſe ſays in his Dedication, "The People of antient "Rome and Greece treated ſuch Men as introduced good Laws, "with uncommon Honour. It is therefore apprehended, that if "*Uniformity* in the State were enacted in Great Britain, it would "produce a national Stability meriting equal Honours; foraſmuch "as the fluctuating Opinions, about what are the *fundamental* Rights "of the Crown, and what of the People, have often engaged the "*Governors* and *Governed* in hoſtile Contentions, rendering the Na-"tion weak by Diviſions, which, in former Times, excited neigh-"bouring Potentates to invade and wreſt away thoſe very Rights "both Parties contended for; and *in our Times*, unqueſtionable Au-"thority hath informed us, that the ſame Cauſes are engendering "the ſame Effects." See Acherley's Britannic Conſtitution, with the Supplement thereto, Fol. Ann. Dom. 1727. From theſe Specimens the Reader may perceive the Tendency of this Work, and forejudge the Satisfaction he will have in the Peruſal of it.

and that nothing may be omitted which may tend to give Effect to ſo important an Undertaking, I will take the Liberty juſt to State my Ideas, in Outline only, of the Frame of the Bill that may be neceſſary for the Adoption of Parliament, in order to the End propoſed; leaving its Completion to that *united* Wiſdom, which ſuch a Propoſition calls for, and muſt of Courſe require.

In the firſt Place then, this Bill, in order to an Act, may be entitled, an Act *declaratory of the Conſtitution*, for *ſettling the Conſtitution*, and *for obtaining Uniformity in the State*.

In the Preamble, the Reaſon and Occaſion of this Act, will of Courſe be ſtated, its Propriety ſhewn by the ſeveral Acts already paſſed for Uniformity in the Church,* and its Efficacy and Effect deduced from the Efficacy and Effect of that Example. It will then proceed to ſtate and declare,

Article 1, What the Prerogative of the Crown is; and if it be, according to Sir William Blackſtone, ſo *certain* and *notorious* that it cannot be exceeded without the Conſent of the People, in this no Difficulty can occur.

Art. 2, What the Privileges of the Houſe of Lords are. †

* See 1 Eliz. xiii. and xiv. Char. II.

† For a Review, *at leaſt*, of the Privileges of the Houſe of Lords, there wants no ſtronger Reaſon than the *late* Exertion of them, in the Caſe of William Parker, Printer of the General Advertiſer. An Exertion, to which it were to be wiſhed that the Houſe, for its own Sake, would turn its moſt ſerious Attention. A Man is complained of for publiſhing what is *ſuppoſed*, and not *proved* to be, a Libel. This Man is ordered to the Bar of the Houſe. He, conſcious of the Publication, and knowing that his coming to the Bar can only tend to *criminate* himſelf, does not appear. What then?

Art.

Art. 3, What the Privileges of the Houſe of Commons are. § Of both which laſt, the *ſober* Examination, and the *candid* Reports of their own Committees of Privileges will of Courſe be received; intending, ſo far from taking away either from the *legal* Prerogative of the Crown, or the *juſt* Privileges of Parliament, that *both* may

An Uſher of the Black Rod, no Conſtable, without Warrant, by mere Reſolve of the Houſe, is ordered to bring him by Force to the Bar. And what further? By mere Reſolve again, he is committed, without Accuſation, without Defence, without *Trial by Jury*, to cloſe Impriſonment, until he ſhall give up the Rights of his Fellow-Subjects, by acknowledging this Power in the Houſe; and thereby placing an unconſtitutional Precedent upon the Journals, to be drawn into Uſe for the ſame unconſtitutional Purpoſe at other Times. But admit this ſingle Poſition only, that the Privileges of the Houſe of Lords cannot *annul* the Conſtitution, nor *repeal* Acts of Parliament (and who is it that will maintain a contrary Doctrine?) and the Caſe of this Man is ſo groſs a Violation of both, that Precedents in Support of it ſerve but to enhance the Violation. Can the King take away the Liberty of the Subject in this *ſummary*, and, of courſe, in this *arbitrary* Way? Every Body knows that this Power is not in the Prerogative of the Crown, even in Caſes of High Treaſon. And if the *executive* Power is not entruſted with this Authority in any Caſe, ſhall the Privilege of Parliament claim it, and claim it too in the Caſe of a Libel? But it is neceſſary; for this is the Plea. But Neceſſity is the Tyrant's Plea. Beſides, how can *Illegality* be neceſſary for Redreſs, when *Legality* has already provided the moſt ample Means? Let this Caſe, therefore, be among thoſe many Arguments which now ſo forcibly cry out, "*Settle* "*your Conſtitution.*"

§ For the Neceſſity of a Review of the Privileges of the Houſe of Commons, look to the *Middleſex Election*, and ſee the *audacious* Uſe that has been made of them there. An Uſe that ought to make the Blood of every *Elector* in the Kingdom boil in his Heart, as in the Caldron of Macbeth's Witches, never to ſubſide, till this wicked Precedent be torn from the Journals of that Houſe; and, the Uſurpation, like the *Royauté* of the French Parliament by Lewis XI, *miſe hors de page*. But this Matter has been ſo fully, and ſo often ſet in its true Light, by that real Patriot, and Friend to his Country, Mr. Wilkes, whoſe Caſe it was; and has been painted in Colours ſo much ſtronger than any others, and which are ſo peculiarly his own, that to *refer*, and not to *explain*, is the intended Buſineſs only of this Note.

be *extended in all Caſes whatſoever*, where the Good of the Community is the *direct* Object; and where they do not *in any Reſpect whatſoever* interfere with the Rights, Liberties, Privileges, and Immunities of the People at large.

Art. 4, What the Rights, Liberties, Privileges, and Immunities of the People at large are; as well thoſe *natural* Rights which are by their Nature *unalienable*, as thoſe *reſerved* Rights, which Compact, and immemorial Uſage, and Cuſtom, have interwoven with, and eſtabliſhed in the Conſtitution; as the *fundamental* and *irrevocable* Laws of the Land, ſubſiſting, and exiſting, between the *Governors* and the *Governed*. †

Art. 5, That theſe Rights of the Crown, of the Houſe of Lords, of the Houſe of Commons, and of the People, conſtitute the *material* Part of the Conſtitution; as the King, the Lords, and the Commons form the *formal* Part thereof, in order to the Execution of its Government, which is

† If ſuch an Act as this had exiſted before the American War, *Repreſentation in order to Taxation*, had, in this Schedule of the Rights of Engliſhmen, of courſe appeared. And what then? Why then neither the Corruption of the American War, nor the American War itſelf, had ever taken Place: For the End of the American War was to eſtabliſh the *arbitrary* Power in Parliament of *Taxation without Repreſentation*, and the Means to obtain that End was Corruption. But of what Uſe is a Bawd to obtain the Chaſtity of Cæſar's Wife, when the Chaſtity of Cæſar's Wife muſt not even be ſuſpected? When, to ſpeak without a Metaphor, Repreſentation in order to Taxation was a fundamental Law of the Land, which Parliament cannot take away, nor repeal, nor yet dare to counteract? In this ſingle Inſtance then is ſeen the Utility of the Act propoſed. It cuts up arbitrary Power by the Roots, and Corruption rots with the Tree itſelf upon the Ground: For in this Caſe again, as well might Lord North now ſay, I will be the Archbiſhop of Canterbury without ſubſcribing to the XXXIX Articles; as for him to have ſaid, as he did, with all the Corruption of the Treaſury about him, I will tax America without Repreſentation.

founded

founded upon, and muſt *univerſally* be directed by, theſe *Rights*: That theſe Rights as *natural* Rights are *unalienable*, and as *political* Rights *fundamental* and *irrevocable*, whilſt the Conſtitution laſts; and that the Conſtitution (*quoad* theſe Rights as well as its Form) cannot be altered in any Degree, but by and with the Approbation and Conſent firſt had and obtained of the *whole Body* of the People called upon for this *ſpecial* Purpoſe, in their *collective*, in order to their *repreſentative*, and not in their *elective* Capacities only.

Art. 6, That the *ſupreme legiſlative Authority*, (the Objects of which are the *Duties* and *civil Rights* of the People) is veſted in the King, in the Lords, and in the Commons, and no where elſe; and that (*quoad* theſe Duties and Rights) as ariſing out of, and depending upon, the *natural* and *political* Rights of the Conſtitution, this Authority is "abſolute and without Controul."‡

Art. 7, That for the Preſervation of theſe Rights, and that they may be handed down to Poſterity inviolate and inviolable, and in order effectually to carry into Execution the good Intentions of this Act; a *Teſt* muſt be adopted ſuitable to the Occaſion: A *Teſt*, to which not only every Deſcription of Perſon who may have the leaſt Concern in, or Interference with the Offices or Functions of the State, but every *Teacher*, *Preacher*, or other *Profeſſor* of every Species of Religion (all tolerated *univerſally*, and without *Limitation*

‡ "As Men have given up their natural Independence to live "under *political Laws*, they have given up the natural Community "of Goods to live under *civil Laws*." See Spirit of Laws, v. ii. p. 210.

as

as *Religions*) ſhall (by the Proviſion of fit Pains and Penalties) be forced to ſubſcribe and conform. §

§ This Act being intended for Uniformity in the State, the Clergy, for Reaſons alluded to in the Note of Page xliv, have not been in their *political* Rights diſtinguiſhed from the Reſt of the People at large; nor ought they, on any Account to be ſo. With Reſpect to their *civil* Rights or Duties, which are the Objects of Legiſlation, theſe no Doubt, ſo far as they extend to the Exemption of perſonal Services in certain Caſes, of Courſe remain. But why the Body of the Clergy ſhould, by the fundamental Laws of the Land, be ſeparated and ſet a-part from the Reſt of their Fellow-ſubjects, Common Senſe cannot account for; and, it is conceived, no other Senſe has any Thing to do with the fundamental Laws of Society. Why ſhould not the Navy, the Army, the Body of Law, and Phyſic, have *excluſive* Rights in their *political* Capacities, as well as the Clergy? And for better Reaſons, becauſe theſe are made eſſentially ſerviceable to the State, by the *civil* Laws of the State; whereas the Clergy, in many Caſes, are rendered unſerviceable to the State, by the ſame Laws. If the Clergy enjoy the Security of *Life*, *Liberty*, and *Property*, equally, to the full, and in common with the Laity, the Clergy in their *political* Capacities can deſire no more; but this is ſaid of their *political* Capacities merely: for as to their *religious* Capacities, they ought not only to be diſtinguiſhed from the Laity, but the Line to be drawn between the Church and the State ſhould be ſo *deciſively* plain, and *mathematically* true, that no Interference one with the other can poſſibly take Place; the proper Object of each being as different the one from the other, as Matters *ſpiritual* and Matters *temporal* can make them; as Body and Soul can be. The *Care* of the Church is the *Cure* of Souls. The *Care* of the State (though too often the Killing) is the Preſervation of Bodies. Theſe are their characteriſtic Differences, and the natural Reaſons for their Separation: but there is a Reaſon of Policy too. Never had the Church the upper Hand in the State, that the moſt barbarous Government did not follow. Never did the Church interfere with the State, that Miſchief did not enſue. At this very Time, the Interference of *ſome* of the Clergy, with the Quixotiſm of Miniſters, to eſtabliſh and maintain the *canon* and the *feudal* Law in America, has made the War in that Country another *Cruſado*. Hence, therefore, no Objection ariſes to the Uniformity of the Church already obtained, but on the contrary inſomuch as it relates to the Religion of that Church, that Uniformity is fundamental and conſtitutional. The State, it is certain, has an undoubted Right to make Choice of a Religion; by which is meant, whoever approves and chuſes to adopt that Religion, ſhall partake of thoſe *Loaves* and *Fiſhes* of the State which are the Appropriations thereof: but this Eſtabliſhment ſhould go no farther than this, for beyond this it is to be intolerant,

Art.

Art. 8, That this Act is *enactive* of no new Rights, but *declaratory* only of the *original*, *an-*

and Intolerancy in a free State is, or ought to be, a Contradiction in Terms. Preſuming this then to be the Caſe of the preſent eſtabliſhed Religion, as, on the one Hand, no Objection ariſes to it, ſo, on the other, being the Inſtitution perhaps the moſt analogous and conſentanious to the Conſtitution itſelf, it is inſomuch the fitteſt for Adoption; for whilſt it has as much of the Hierarchy, or old Leaven of Popery therein, as may be neceſſary for the Trappings of Majeſty, and the Exerciſe of Faith, it has, it is to be hoped, at the ſame Time, as much of the Spirit of Proteſtantiſm in it, as to have Reaſon for its Guide, and Liberty for its Object; and ſo therefore obtains, as it were of Right, the Preference of the State.

It is for theſe Reaſons too, as well as for many others not to be comprehended in a Note, that without the Adoption of the Teſt propoſed for Uniformity in the State, the preſent Policy of the State, with reſpect to the Roman Catholic Religion, cannot cordially be approved; and that this does not proceed from the Spirit of Intolerancy, it is thought that if Captain Cook had been directed to bring Home with him a Prieſt of every Religion, that he could meet with in his intended Voyage round the World, to be tolerated as well as encouraged in this Country, it had been probably the beſt Object of his Miſſion: For as all Reaſoning is comparing, ſo it being by comparing that Truth from Falſehood, Right from Wrong is diſtinguiſhed, it had been found perhaps, upon Compariſon, that the Religion of the Church of England was, of all other Religions, the beſt; and if it were not, the ſame Compariſon might afford an Opportunity to make it better. Nor does this Objection ariſe from any Prejudice conceived againſt the Roman-Catholic Religion itſelf, *as a* Religion: for ſurely every Man, and more eſpecially every Engliſhman, becauſe a Freeman, has a Right inherent in himſelf, to worſhip God, and "to ſave his Soul alive," in whatever Manner he pleaſes. And ſo, if Tranſubſtantiation be the Road of a Papiſt to Heaven, who is it to put him out of his Way? If he chuſes to give himſelf an annual Flogging, by Way of Pennance, for his Sins, as the Sect of Lacerating Friars do; who is to prevent him? If he chuſes to fall down on his Knees in the Streets to worſhip an Image, what Harm is there done, except in daubing the Knees of his Breeches? Let the Roman Catholics therefore have their Religion, ſo far as it is to carry them to Heaven, in every Manner or Way, both in Faith and Practice: But let their *Religion* be confined to this, by every Lock, Bolt, Bar, or Iron, that human Wiſdom can deviſe, or the State provide. Every body knows that to the Popiſh Religion is annexed a *Syſtem of Politics*, which being founded on the *abſolute Dominion* of the Pope, *both in Church and State*, and that both are equally the

*tient*,

*tient*, and *fundamental* Rights of the *Conſtitution* both in *Matter* and *Form*; that, *as ſuch*, it ſhall be held, deemed, taken, and received; and that therefore, whilſt it can be ſubject to no *Repeal*, or *Alteration* therein, any Attempts to this End ſhall be conſidered, *eo inſtanti*, in the Movers of them, as *High Treaſon* againſt the State, to be tried and puniſhed, as Offences for High Treaſon are, and, if condemned, to be out of the Power of the Crown to pardon, &c. &c. &c. †

This, or ſomething like this, may be the Baſis, on which this noble Edifice is to be built. An Edifice which, as founded upon human Nature, will laſt, whilſt human Nature exiſts. An Edifice ſo large and comprehenſive, and ſo diſpoſed in all

Subject of Faith in its Profeſſors, this *Dominion* is ſo big with Danger to the State, that the Toleration of this Church can be only adjuſted by the moſt *unequivocal* and *expliciit* Subordination in its Profeſſors to the State. Speaking of the Toleration of this Religion in England, even a Roman Catholic himſelf, Baron Monteſquieu, has theſe Words: "If amongſt the different Religions, "there is one that has been attempted to be eſtabliſhed by Me- "thods of Slavery, it muſt *there* be odious; becauſe as we judge "of Things by the Appendages we join with them, it could never "preſent itſelf to the Mind in Conjunction *with the Idea of Li-* "*berty*." [Spir. of Laws, vol. 1. pag. 447.] Upon the whole then, let the Teſt propoſed ſeparate the *Politics* of the Roman Catholics from their *Religion*: Let the one be the Subject of *perfect* Toleration: let the other be the Object of the moſt *determined* Perſecution: let their *Religion* lead them to Salvation, but let their *Politics* be led to Deſtruction: For where *Liberty* is to live, *Slavery* muſt not reſide.

† The Driſt of a late Publication, by Mr. Eden, in Addreſs to the Earl of Carliſle, being evidently to *ſhew* how this Country *may* and *ought* to GO ON in its preſent Meaſures of *Folly* and *Wickedneſs*; and the Drift of this Plan of Reformation, being as evidently to *prove* how it *may* and *ought* to GO BACK to its firſt Principles and better Times; two ſuch Politicians being not likely to *meet*, either here or hereafter, the Teſt of their Politics muſt be the *Senſe* of the Nation in its Meaſures of Adoption.

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its Parts, for the Comfort, Happineſs, and Welfare of Society, that it may not only bring back our loſt Brethren in America to live under its happy Roof, but may tend, in England's Fellowſhip, to aſſimilate all human Kind. Under our preſent Circumſtances, the Habitation we are in, not affording even Shelter for its own Inhabitants; ſo far from inviting others to come among us, ourſelves will be driven away to thoſe better Regions, where the *Happineſs* of Mankind, and not their *Miſery*, is made the Object and End of Society. ‡

‡ Shall it be ſaid, that every Goverment that has had the Shadow of Liberty only, in its Texture, ſhall have had, or ſtill has, its *fundamental* Laws preſerved, even with the *Holineſs* of Care; and ſhall the *fundamental* Laws of that Country, where the *Subſtance* of Liberty is ſaid to exiſt, be in a State of Doubt, nay even in Contempt, and Neglect? The Laws of *Moſes* had the *Ten Commandments* for their Fundamentals. Were they ever doubted, were they ever contemned, were they ever neglected as Fundamentals? Were they ever repealed by any Authority whatever? Are they not ſtill in Force, and are they not likely to continue ſo, unleſs repealed by "the Omnipotence of Parliament?" *Greece* had its XII Tables, and are we not told, that from theſe XII Tables, "as the *Source* "and *Fountain* of Right, *iſſued all* the Streams of *public* and *pri*-"*vate* Law and Equity, by which the Commonwealth was *regu*-"*lated* and *governed*?" See Mart. Philo. Lib. tit. Jur. p. 471. Had not *Rome* its XII Tables, borrowed from *Greece*, and of which Livy ſays, "In immenſo aliarum ſuper alias Acervatarum Legum "Cumulo, *fons omnis publici privatique Juris*?" Has not *Germany* its *Golden Bull*, and "which, even at this Day, they ſtrengthen "and make Supplements to, by new Capitulations upon Occaſion, "according as the *Emperors* abuſe their Power, *or that Tricks are* "*deviſed*, by Colour of the Letter, to elude the *honeſt* Intention of "that *fundamental Law and Conſtitution*?" See Uſe and Abuſe Parl. vol. 1. p. 29. Had not Sweden its Monarchy *limited* by the Laws of its Conſtitution, until *Guſtavus Vaſa* (whoſe Example we have been, in this Reign, bid to follow, "*kill them, or they will* "*kill us*,") made the Kingdom *abſolute* and *hereditary* in his own Family? Had not *Denmark* its Charter of Daniſh Liberty, but now indeed its *Lex Regia*? Had not *Poland* its *Pacta Conventa*, till of

I have now done, what I had conceived it was my Duty to do; for to have poſſeſſed Sentiments ſuch as theſe are, and not to have given public Utterance to them, would have been to have abandoned thoſe *ſocial* Duties, which, as a Member of Society, I am bound to maintain. For the Sentiments themſelves therefore I have no Apology to make. They are the Reſult of *Common Senſe*, (I mean that Senſe which is *common* to us all, the Senſe of diſtinguiſhing between Right and Wrong) and not the *Metaphyſics* of Politics; nor the Wanderings of the Imagination into the airy Regions of Utopian Commonwealths. My Object has been the *Conſtitution* of England, my Arguments *Facts*, my Concluſions *their Conſequences*. The Plan for Reformation propoſed, *ſimple* and *plain*. The Means to effect it, *tranquil*, *eaſy*, *conſtitutional*, and *efficient*. I muſt therefore repeat, that for Senti-

late ſwallowed up by a three-headed Monſter of arbitrary Power? Has not *Switzerland* its Treaty of Alliance between the Cantons of *Uri*, *Switz*, and *Underwalden*, for their mutual Defence, and Conſervation of their Lives and Liberties, and which is ſtill held ſacred and fundamental? Has not *Holland* its Treaty of Utrecht? Have not the *Jews* their fundamental Articles even for their *diſperſed* Government? And what has *poor Old England*, the Land of Liberty, as it is called? Talk of the Revolution, and the Bill of Rights, and you are guilty of High-Treaſon. Speak of Magna Charta, and, as a Proverb of Reproach, a *filthy Rhyme* is to be coupled with it. And ſhall theſe Motives have no Effect towards *Reformation*? Let the Guardian Angel of Liberty, let the Majeſty of the People of England forbid it! The Object of the Settlement at the Revolution was the *Limitation* of the Power of the Crown. Let the Object of Settlement *now* be the *Limitation* of the Power of Parliament! Let it be ſaid what Parliament CANNOT do! And then what it CAN do, will be ſtill Power enough left for any *free Government* to poſſeſs. As it is, the Power of Parliament is ſaid to be *unlimited*, and under ſuch *Unlimitation* the Rights of the People have been taken away.

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ments ſuch as theſe are, I have no Apology to make. But in all other Reſpects great Candour is neceſſary, much Apology is due. Much Apology is due, for the Length of this Dedication; and the Apology is, that I have not had Time to make it ſhorter: For although the Subject-Matter has been long, and conſtantly the Employment of my Thoughts; the *Compoſing*, the *Writing*, the *Printing*, and the *Correcting*, from Page xxiii of this Dedication to the preſent Period of Writing, has been accompliſhed ſince the Receſs of Parliament, within the Space of ſix Weeks. Had it been otherwiſe my Thoughts had been more concentered, and in gathering the *Fruit*, I had reſted to have culled the *Flowers* alſo. As it is, I have only to ſay, that Truth was my Object, that Truth is naked, and that the *Nakedneſs* of Truth is perhaps its firſt and faireſt Ornament. This for myſelf. The Reſt depends on you. Great is the Hour, weighty the Buſineſs, and important the Occaſion. Let the following Quotation, therefore, from a very excellent Writer, as ſerving for your Uſe, be alſo my Concluſion upon the whole.

"As the People are the Fountain of Power and "Authority, *the original Seat of Majeſty*, the Authors "of Laws, and the Creators of Officers to execute "them; if they ſhall find the Power they have con-"ferred abuſed by their *Truſtees*, their Majeſty vio-"lated by *Tyranny* or by *Uſurpation*, their *Authority* "*proſtituted to ſupport Violence or ſcreen Corruption*, "the Laws grown pernicious through Accidents "unforſeen or unavoidable, or rendered ineffectual

"through

" through the *Infidelity* and *Corruption* of the " Executors of them; then it is *their Right, and* " *what is their Right is their Duty*, to resume that " delegated Power, and *call their Trustees to Ac-* " *count*; to *resist* the Usurpation, and *extirpate* " the *Tyranny*; to *restore* their *sullied Majesty*, " and *prostituted Authority*; to *suspend, alter*, or " *abrogate* those Laws, and *punish* their *unfaithful* " and *corrupt* Officers. Nor is it the Duty only of " the *united Body*; but every Member of it ought, " according to his respective Rank, Power, and " Weight in the Community, to concur in ad- " vancing and supporting *these glorious Designs*." §

§ See Elem. of Mor. Philos. pag. 46.

THE END.

# THOUGHTS

## ON THE

# LETTER of EDMUND BURKE, Esq.

HAVING ſeen Mr. Burke's late Publication on the affairs of America, I was led to read it with all that attention which every performance of his muſt neceſſarily deſerve. I ſympathiſe moſt cordially with him in thoſe feelings of humanity, which mark, in language ſo expreſſive, the abhorrence of his nature to the effuſion of human Blood. I agree with him in idea, that the War with America is "fruitleſs, hopeleſs, and unnatural"; and I will add, on the part of Great-Britain, *cruel and unjuſt*. I join hand in hand with him in all his propoſitions for Peace, and I look with longing eyes for the event. I participate with him in the happineſs of thoſe friendſhips and connexions, which are the ſubjects, ſo deſervedly, of his panegyric. The name of Rockingham is a ſacred depoſit in my boſom. I have found him diſintereſted, I know him to be honeſt. Before I quit him therefore, I will firſt abandon human nature.

So far then are Mr. Burke and I agreed. I am ſorry that we ſhould diſagree in any thing. But finding that we have differed, on a late occaſion, in our Parliamentary Conduct; and that I cannot concur with him in opinion on a matter, as I think, of very great national importance: it is therefore not in the zeal of party, but in the ſpirit of patriotiſm, not to confute, but to be convinced, not to point out error, but to arrive at truth, that I now venture to ſubmit my thoughts to the Public. I feel the weight of the undertaking, and I wiſh it in abler hands. I am not inſenſible to my own incapacity, and I know how much I ſtand in need of excuſe: but as public good is my object, public candour, I truſt, will be my beſt apologiſt.

Mr. Burke commences his Letter with the mention of "the two laſt Acts which have "been paſſed with regard to the Troubles in "America." The firſt is, "for the Letter of "Marque," the ſecond, "for a partial ſuſpen-"ſion of the *Habeas Corpus*." Of the former, he ſays little, as not worthy of much notice. Of the latter, his diſtinctions are nice, his ſtrictures many, his objections unanſwerable; and yet, although ſo well appriſed of the dangers and miſchiefs of this Act, he ſays, "I have not "debated againſt this Bill in its progreſs through "the Houſe, becauſe it would have been vain "to oppoſe, and impoſſible to correct it." But this is matter of inquiry. As I thought diffe-

ently,

rently, I acted differently. Being in the country, this Bill was in its way through the Houſe of Lords before I knew any thing of it. Upon my coming accidentally to town, and hearing of its malignity, I went down to the Houſe, I oppoſed it, and entered my ſolemn Proteſt on the Journals againſt it. It is true, I ſtood ſingle and alone in this buſineſs; but I do not therefore take ſhame to myſelf. Rectitude of intention will even ſanctify error. But, ſays Mr. Burke, "During its progreſs through the Houſe "of Commons, it has been *amended*, ſo as to "expreſs more diſtinctly than at firſt it did, the "avowed ſentiments of thoſe who framed it." Now if the Bill was *amended* in its progreſs through the Houſe of Commons, Mr. Burke's reaſon "for not debating againſt the Bill" cannot be well founded; for his reaſon is, "that "it would have been vain to oppoſe, and *im-* "*poſſible to correct* it:" but to *amend* a thing is to *correct* it; and therefore if the Bill was *amended*, it was *not impoſſible to correct it*.

The caſe was this. This Bill was brought into the Houſe of Commons under the black coverture of deſigning malice. Some of the honourable Members of that houſe, ſeeing it in this dark diſguiſe, endeavoured to unrobe it of its darkneſs. Their endeavours ſucceeded, and "it was *amended*, ſo as to expreſs more diſ- "tinctly than it at firſt did, the avowed ſenti- "ments of thoſe who framed it." In this

ſhape

ſhape it came to the Houſe of Lords: bad enough in all conſcience: but I uſe Mr. Burke's own words when I ſay, "there is a difference "between bad and the worſt of all." I thought it bad, and therefore I put my negative upon it; had it been worſe, *a fortiori*, I ſhould have done the ſame. But here it would ſeem as if Mr. Burke and I were not agreed in our notions of *bad* and *worſe*: for what he holds *bad*, I eſteem *worſe*, and what he calls *worſe*, I think *bad*. To explain myſelf. He conſiders a *partial* Suſpenſion of the *Habeas Corpus* a greater evil, than an *univerſal* ſuſpenſion of it. I conceive the contrary: though if Mr. Burke's premiſes were right, I ſhould approve his reaſoning, and admit his conſequences. He ſays "whenever "an Act is made for a ceſſation of law and "juſtice, the whole people ſhould be univerſally "ſubjected to the ſame ſuſpenſion of their "franchiſes." Be it ſo: but then the whole people ſhould fall under the reaſon and occaſion of the Act. If England was under the ſame predicament with America, that is to ſay, if Engliſhmen were looked upon to be Rebels, as the Americans are, in ſuch a caſe, a *partial* ſuſpenſion of the *Habeas Corpus* would be invidious, and conſequently more unjuſt than a *general* ſuſpenſion of it; for why ſhould one Rebel be diſtinguiſhed from another? but Engliſhmen are not accounted Rebels, and the Americans are; and therefore in the ſame degree that a *partial* ſuſpenſion, on the one hand, *might* be

juſt,

juſt, an *univerſal* ſuſpenſion, on the other, *would* be unjuſt. Where the offence is local, the puniſhment too muſt be local. It would have been unjuſt if the lands in *America* had been forfeited to the Crown in the year 1745, becauſe *Scotland was then in Rebellion.* I do not uſe theſe arguments in favour of the Bill. The principle was *bad* with reſpect to America: it was *worſe* with regard to this country. And herein conſiſted the very malignity of the Bill: for whilſt the *Habeas Corpus* was taken away from the *imputed guilty* Americans, the *innocent* Engliſh were at the ſame time deprived of its benefit; ſuſpicion, without oath, being made the two-edged ſword that was to cut both ways.

But, ſays Mr. Burke, "The alarm of ſuch a "proceeding," (that is of an univerſal ſuſpenſion of the people's franchiſes) "would then be "univerſal. It would operate as a ſort of *call* "*of the nation.*" As to my part I have heard ſo many *calls of the nation* of late, without any *anſwer* being made to them; that I fear the *nation* has either loſt its *hearing* or its *voice:* but ſuppoſing otherwiſe, of what avail can a *call of the nation* be againſt the ſupremacy of an act of parliament? And who ſhall dare to reſiſt the authority of a ſtatute that can alter the eſtabliſhed religion of the land, nay even bind *in all caſes whatſoever?* But more of this by and by.

Mr. Burke goes on to ſay, "As things *now* "ſtand, every man in the Weſt-Indies, every one "inhabitant of three unoffending Provinces on "the Continent, every perſon coming from the "Eaſt-Indies, every gentleman who has travelled "for his health or education, every mariner who "has navigated the ſeas, is, for no other offence, "under a temporary proſcription." But how did things ſtand *before the amendment* of the bill? Not only every man as deſcribed above, but *every individual* in this kingdom was under the ſame temporary proſcription. The writing of a letter to, or receiving a letter from, America, in this country, though the contents were ever ſo harmleſs, was ground of ſuſpicion ſufficient to immure a man in the caſtle of Dumfries, or Pendennis, or whereſoever elſe perſecution ſhould think fit to ſend him*. We have been ſaved from this hell-governed proſcription. Oppoſition removed it from us. It had been well to have done ſo from every ſubject of the realm: but it did what it could, and the liberty of many unoffending perſons has been preſerved thereby.

This being the ſtate of the Bill, *amended*, as

* It is ſaid that the number of perſons who died in different priſons during the deſpotic government of the Marquis de Pombal, late miniſter of Portugal, *without having been convicted of any crime*, is computed at 3070 perſons; and thoſe who were languiſhing in irons at the time of his diſgrace amounted to 800. If this act had paſſed, as it was firſt framed, and if we may meaſure our puniſhments by thoſe meted out to our brethren in America; what reaſon is there to ſuppoſe that our ſituation had not been the very counterpart of this?

Mr.

Mr. Burke himſelf confeſſes, one might have thought that, though *bad*, it was *better* than it had been; but the very reverſe of this is the opinion of Mr. Burke: for in one place, he ſays, "the limiting qualification, inſtead of taking "out the ſting, does, in my humble opinion, "ſharpen and envenom it to a greater degree." And, in another, he adds, "that far from ſoftening the features of ſuch a principle, and "thereby removing any part of the popular "odium or natural terrors attending it, I ſhould "be ſorry, that any thing framed in contradiction "to the ſpirit of our conſtitution did not inſtantly "produce in fact, the groſſeſt of the evils, with "which it was pregnant in its nature." So that *amendment*, by ſoftening the features, and removing the popular odium, without producing the groſſeſt of evils with which it was pregnant in its nature, has, if I may uſe ſuch terms of contrariety, made the bill *worſe*.

Such is the doctrine of Mr. Burke, and juſt it may be: but if it be, I can only ſay that he and I ſee objects through different mediums; and that if he thinks it right to do evil that good may come of it, I wiſh to do good, by averting the evil. The phyſician that ſtops the progreſs of a diſeaſe, may, at one time or another, hope for its cure; but he that leaves the diſeaſe to the efforts of nature alone, truſts to a cauſe that is very unſure in the effect.

Mr. Burke, however, in aid of his opinion ſays, that, "On the next unconſtitutional Act, all the

" fashionable world will be ready to say—Your " prophecies are ridiculous, your fears are vain, " you see how little of the mischiefs which you " formerly foreboded are come to pass. Thus " by degrees that artful softening of all arbitrary " power, the alledged infrequency or narrow ex- " tent of its operation, will be received as a sort " of aphorism: and Mr. Hume will not be sin- " gular in telling us, that the felicity of man- " kind is no more disturbed by it, than by earth- " quakes, or thunder, or the other more unusual " accidents of nature." Now as to the fashion- able world, living as they do under the tyranny of that greatest of all tyrants, *Fashion*, upon such an occasion, I should hardly look up to them as a fit court of appeal. And as to Mr. Hume, let those remember who adopt his aphorisms—that that great philanthropist and friend of liberty, Doctor Franklin, has not, in the depths of his wisdom, thought, " alledged infrequency or " narrow extent of operation," any argument to prevent the protection of mankind even "against " the more unusual accidents of nature;" and let them in the remembring of this, regret, that his Politicks, like his Philosophy, have not been the subjects of our experiment. Happy, thrice happy, had it been for this country, if, instead of besetting this able man with foulmouthed language, and indecent mockery, (indecent doubly so, because of the venerable council be- fore whom he stood) his advice, like his *con- ductors*, had been made use of to draw the forked lightning from that portentous cloud,

which,

which, with overſpreading ruin, has now burſt upon our heads.

Another argument made uſe of by Mr. Burke for not debating againſt the Bill, is this. "It is," ſays he, "ſome time ſince I have "been clearly convinced, that in the preſent "ſtate of things, all oppoſition to any meaſures "propoſed by miniſters, where the name of "America appears, is vain and frivolous." I think ſo too: but then, it does not therefore follow that oppoſition is to be laid aſide. The queſtion, how far a member of either houſe can give over his attendance in Parliament, becauſe he is out-voted, is a nice queſtion; and worthy the examination of thoſe who have leiſure and abilities for the purpoſe. My own private opinion is, that no member, *individually*, can do this, conſiſtently with his duty. *Collectively* he may: as the precedent of ſeceſſion, during the adminiſtration of Sir Robert Walpole, ſhews; and as reaſon proves: for it is not to be preſumed that a combination to this end can be obtained, without a ſufficient foundation for it; and therefore when it does take place, it is intended, as Mr. Burke elſewhere ſays, "as a ſort of call of the nation." But even here, I muſt not think it juſtifiable, unleſs ſupported on the following grounds. In the firſt place, the ſeceſſion muſt be general; that is to ſay, it muſt not conſiſt of this or that party only in oppoſition, but muſt include the whole Minority againſt the meaſures that have

provoked ſeceſſion. In the next place, it muſt be a ſeceſſion not *ſub ſilentio*, but proclaimed either by Remonſtrance on the Journals, or public Addreſs to the People; and when both theſe circumſtances attend the act, then ſeceſſion is not only juſtifiable, but is the moſt faithful pledge of duty that can be given. I have therefore exceedingly to lament that a ſeceſſion, ſuch as this is, has not been carried into execution; and not only on account of the proof that would have been given thereby to the nation of the ſincerity of oppoſition, but becauſe I do verily believe from my ſoul, that if it had, daring as Miniſters are and have been, they would not have preſumed to have gone the lengths they have done in the open violation of the Conſtitution, though upheld, as they ſay they are, by Parliament, by the country gentlemen, and by their long tribe of obſequious addreſſers.

But to return more directly to the argument of Mr. Burke, and admitting that "all "oppoſition where the name of America ap-"pears, is vain and frivolous," and therefore that Mr. Burke was right in not debating againſt the Bill; the ſame reaſon muſt hold good in every caſe of oppoſition where the ſame circumſtances exiſt: for not to debate in this inſtance, and to debate in another, "where "the name of America appears," muſt be wrong. Both cannot be right. And therefore Mr. Burke's repeated propoſitions ſo ably made, and ſo well ſupported, for peace, might

have

have been diſpenſed with. Objections to taxes, in aid of this deſtructive war, were unneceſſary. In ſhort all debate was

"Time miſpent, and language miſapplied:"

for "all oppoſition is vain and frivolous, where "the name of America appears."

Having thus ſtated the reaſons, and examined the motives that occaſioned *a difference in conduct* between Mr. Burke and me; I ſhall now, turning over thoſe many leaves of his letter, of which, were I to take any notice, it muſt be in admiration and in praiſe, proceed to that part of it, wherein our *difference in opinion* prevails. And here, in page 46, Mr. Burke ſays, "But I "do aſſure you, (and they who know me pub-"lickly and privately will bear witneſs to me) "that if ever one man lived, more zealous "than another, for the ſupremacy of Parlia-"ment, and the rights of this Imperial Crown, "it was myſelf." Now if I cannot join with Mr. Burke in this ſolemn declaration of his, I truſt, it will not be therefore imputed to me, that I am leſs zealous than he is for the rights of the Britiſh Legiſlature; nor if I object to the terms of his propoſition ſhall I be condemned as captious: for to cavil does not belong to me, and more eſpecially about words. But when I ſee, and know, and am perſuaded, that theſe very modes of ſpeech, *ſupremacy of Parliament*, *rights of this imperial Crown*, with their kindred others, *unity of Empire*, *allegiance to the State*, and ſuch like high-ſounding *ſeſquipedalia verba*,

by becoming, in defiance of their impropriety, the deities of modern invocation, and by operating as incantations to miſlead mankind, have done more miſchief to the State even than the ſword itſelf of Civil War; be their authority ever ſo great, I can never ſubſcribe to their uſe. *Supremacy of Parliament* is a combination of terms unknown to the Engliſh polity; and as to *allegiance to the State*, though it be the ſanctified phraſeology of an Archbiſhop, it is, like the "Whiggiſm" he cenſures, allegiance "run mad." * Supremacy is an appendant of the Crown, and ſo is allegiance. The *former* is the right of the King, (as heretofore it was of the Pope) in his *eccleſiaſtical* capacity, the *latter* in his *temporal*; and there cannot be two rights, in one State, to the ſame thing. Who ever heard of the Oaths of Supremacy and of Allegiance to the Parliament? And why are they not taken to the Parliament? Becauſe they are due to the King, and not to the Parliament; and it is not fit that the Parliament ſhould invade "the rights of this Imperial Crown." Let each poſſeſs its own, and ſo the Conſtitution will be preſerved. That the Parliament is *ſu-*

* Vide the Archbiſhop of York's Sermon, printed by T. Harriſon and S. Brooke in Warwick-Lane, p. 22. It had been well if this, or any thing elſe that the Primate ſaid, could have ſet aſide the criminal charges to which his Sermon was expoſed: but as it was indefenſible, ſo is it matter of great national concern to find ſuch doctrines propagated by the once Tutor of the Heir-apparent to the Crown; though it prove of ſome conſolation, as the Earl of Shelburne remarked, that his Majeſty, perceiving the evil tendency of ſuch principles, had, in his wiſdom, removed him from the tuition of the Prince.

*preme,*

*preme*, I admit. It is the *ſupreme court*, or *curia magna* of the Conſtitution; as the Houſe of Lords is the *ſupreme* court of Juſtice, or *dernier reſort* of the Law. Both are *ſupreme*, and yet *ſupremacy* was never attributed to the Houſe of Lords, but ever, *in the language of the Conſtitution*, belonged to the King, as the *ſupreme* Head of the Church. In like manner I admit, that the people are bound in obedience to the laws of Parliament: but this does not therefore infer "allegiance to the State." Allegiance is one thing, obedience another. Allegiance is due to the King, ſo long as, in his *executive* capacity, he ſhall *protect* the rights of the People. Obedience is due to the Laws, when founded on the Conſtitution: but when they are *ſubverſive* of the Conſtitution, then *diſobedience* inſtead of obedience is due; and *reſiſtance* becomes the law of the land *.

Theſe were my reflections, conſequent on Mr. Burke's declaration; but my hope was,

* Sir William Blackſtone ſays, "If any *future Prince* ſhould "endeavour to ſubvert the Conſtitution by breaking the original "*Contract* between King and People, ſhould violate the *fundamen-*"*tal* Laws, and ſhould withdraw himſelf out of the Kingdom; "we are now authoriſed to declare, that this Conjunction of Cir-"cumſtances would amount to an Abdication, and the Throne "would be thereby vacant." But if any *future Parliament* ſhould endeavour to ſubvert the Conſtitution, by breaking the original *Compact*, and ſhould violate the *fundamental* Laws of the People, What then? The learned Judge has told us: "In theſe, and *other* "*Circumſtances*, which a fertile Imagination may furniſh, ſince "both Law and Hiſtory are ſilent, it becomes us to be ſilent too; "leaving to *future* generations, whenever neceſſity and the ſafe-"ty of the *whole* ſhall require it, the *Exertion* of thoſe *inherent* "(though latent) *Powers of Society*, which no climate, no time, "no Conſtitution, no Contract, can ever deſtroy or diminiſh." Vid. Blackſtone's Comm. vol. i. pag. 245.

that

that although we differed in *words*, in *things* we might yet be agreed. How great then was my diſappointment, when inſtead of ſeeing this ſubject unrobed of its gorgeous apparel, and like truth made to appear naked and unadorned, when inſtead of diſcuſſion, which ſuch a declaration ſeemed neceſſarily to call for, when inſtead of reaſoning, and of argument, (as if afraid of their conſequences,) I found aſſertions without the ſhadow of proof, and precedents importing no authority, but upholding error, ſubſtituted in their room! "Many others, in-"deed," ſays Mr. Burke, "might be more "knowing in the extent, or in the foundation "of theſe rights. I do not pretend to be an "antiquary, or a lawyer, or qualified for the "chair of profeſſor in metaphyſics. I never "ventured to put your ſolid intereſts upon ſpe-"culative grounds. My having conſtantly de-"clined to do ſo has been attributed to my in-"capacity for ſuch diſquiſitions; and I am in-"clined to believe it is partly the cauſe. I ne-"ver ſhall be aſhamed to confeſs, that where "I am ignorant, I am diffident. I am indeed "not very ſolicitous to clear myſelf of this im-"puted incapacity; becauſe men, even leſs "converſant than I am, in this kind of ſub-"tilties, and placed in ſtations, to which I "ought not to aſpire, have, by the mere "force of civil diſcretion, often conducted the "affairs of great nations with diſtinguiſhed "felicity and glory." This may be very true,

but

but ſurely it is not very ſatisfactory. To be *more* zealous than any one man living "for the "Supremacy of Parliament, and the Rights of "this imperial Crown," and *leſs* knowing than others "in the extent and foundation of theſe "rights," is to profeſs more of implicit faith and enthuſiaſm, than, I confeſs, I expected to have met with, at leaſt now adays, in *civil* concerns. Of Fanatics in the Church I knew there were ſtill many to be found, but a State Fanatic, I thought, was a *phænomenon* in politics not of modern appearance. If indeed our Parliaments were, as our Scottiſh race of Kings held themſelves to be, God's vicegerents, and governed the State *de jure divino*; then ſuch a degree of belief had been only correſpondent to the occaſion of it: but Parliaments have ever been the works of men's hands, as, thank God, we now know that our Kings are; or otherwiſe we had not had our preſent moſt gracious Majeſty on this throne, nor yet that additional ſolemn contract between King and People, I mean the *Act of Settlement*, for the eternal ſecurity, as I truſt, of thoſe Rights of the Subject which are intruſted to the executive power.

Again, Why ſhould a man be either antiquarian, lawyer, or metaphyſician, or what need is there of ſpeculation, to know "the extent "and foundation of theſe rights?" The rights of Engliſhmen want no ſuch profeſſional authority for their ſupport: neither are they mere abſtract terms, the *entia rationis*, or creatures

of

of the underſtanding; but are, for our knowledge, written in our hearts, with the blood of our anceſtors. But "the affairs of great nations are often conducted with diſtinguiſhed "felicity and glory by the mere force of civil "diſcretion." What! are the rights of Engliſhmen to be held at the *diſcretion* of miniſters? Is *civil diſcretion* the rule of our government? Wherein does *civil diſcretion* differ from *will*, the Law of Tyrants? And will any miniſter of this country ſay, "I am not converſant in this kind of ſubtilties, the extent and "foundation of theſe rights," and therefore will govern by this unconditional power, the mere force of *civil diſcretion?* This can never be. But I have ſaid that I found aſſertions without the ſhadow of proof, and precedents importing no authority, but upholding error; and this obliges me to be more particular. The ſubject is a deep one, and the conſideration of it the moſt intereſting of any that ever fell under political contemplation. It is no leſs than to know whether our *political* exiſtence has any *real* foundation; or whether, as it is ſaid of the ſea, it be without a bottom. Perhaps I may be loſt in the depths of reſearch: but if I am, I carry this conſolation with me, that I ſink in the cauſe of truth. I have this hope, however, of preſervation about me, that I ſhall not dive into myſteries, nor yet venture among the quickſands of metaphyſical abſtractions. The Conſtitution of my country is the ground

on

on which I wiſh to ſtand, and if I reach this ſhore, the ſafety I have gained will reward the dangers I have paſſed.

Mr. Burke having given us his *creed* in the Supremacy of Parliament, next applies its *unlimited* power to and over the American Colonies; and then tells us what the Supremacy of Parliament is in England. I ſhall conſider the laſt firſt, namely, the Supremacy of Parliament in England, as a major propoſition in which the minor is contained. He ſays (in order to ſhew "the compleatneſs of the legiſlative au-"thority of Parliament *over this kingdom*") that "if any thing can be ſuppoſed out of the power "of human legiſlature, it is religion: I admit "however, that the eſtabliſhed religion of this "country has been three or four times altered "by Act of Parliament; and therefore that a "Statute binds *even in that caſe*." This is concluſive as to Mr. Burke's idea both with reſpect to the *unlimited right* as well as the *unlimited power* of Parliament: but whilſt he is ſharp even to a point for the *general unlimited right* of Parliament, he adduces ſome caſes to blunt the edge of its *power over this kingdom*. He ſays, "But we may ſafely affirm, that notwith-"ſtanding this *apparent* omnipotence, it would "be *now* found as impoſſible for King and Par-"liament to change the eſtabliſhed religion of "this country, as it was to King James alone, "when he attempted to make ſuch an altera-"tion without a Parliament." Further; "I

"ſee

"ſee no abſtract reaſon, which can be given, "why the ſame power that made and repealed "the High-Commiſſion Court and the Star-"Chamber might not revive them again: but "the madneſs would be as unqueſtionable as "the competence of that Parliament which "ſhould make ſuch attempts." Furthermore: "The King's Negative to Bills is one of the "moſt indiſputed of the royal prerogatives, and "it extends to all caſes whatſoever*; but the "exerciſe is wiſely forborne." Moreover: "We "know that the Convocation of the Clergy had "formerly been called, and ſat with nearly as "much regularity to buſineſs as Parliament it-"ſelf. It is now called for form only." Theſe then are what I call precedents without authority, but upholding error: for diſtinguiſhing, as muſt be done, between *right* and *power*, Parliament cannot exerciſe a *power* without a *right* to that *power*; or if it does, it is an *uſurpation of power*, which ſooner or later never fails of redreſs. Precedents therefore of Acts of Parliament, repugnant to the fundamental principles

* Has the King a right to reject a Bill that has paſſed the two Houſes of Parliament, ſuch Bill containing no infringement upon the Prerogative of the Crown? Is not the power of rejecting in the Crown given for the ſecurity of the Prerogative, and *limited* to this uſe only? And of which is not this the reaſon? That the King having no ſhare in the Debates of either Houſe cannot be ſuppoſed to be a judge of the fitneſs or unfitneſs of any Bill, any otherwiſe than as it relates to the Prerogative of the Crown. The power of *reſolving*, it is plain, is not in the Crown. Monteſquieu ſays, "If the Prince were to have a ſhare in "the Legiſlature by the power of *reſolving*, Liberty would "be loſt. But as it is neceſſary he ſhould have a ſhare in the "Legiſlature *for the ſupport of his own prerogative*, this ſhare "muſt be in the power of *rejecting*." Vide Spirit of Laws, vol. i. pag. 227.

of

of the Conſtitution, are no proofs of the Supremacy or Omnipotency of Parliament, but inſtances only of the *abuſe* of Parliament; "and "as no government," ſays Machiavel, "can be "of long duration, which, by the original "formation of its conſtitution, is not frequent-"ly renewed or drawn back to its firſt princi-"ples," ſo whenever this happens to us, as it often has done, *and, I truſt, is again not afar off from us*, theſe precedents, like ſo many clouds diſperſed, only ſerve to ſhew, that although they may darken the face of the conſtitution, they can never extinguiſh its light.

But a word or two more particularly of theſe precedents. Much ſtreſs has been laid on the alterations that have been made in the eſtabliſhed religion, in order to ſhew the right of Parliament to omnipotency. It is the doctrine of Sir William Blackſtone*; but as the moſt able chymiſt cannot extract *that* from any given thing, *which* does not exiſt in its nature, ſo is this precedent, for this reaſon, by no means a caſe in point. In the firſt place, religion has nothing to do with the *civil* rights of the State. It is ſet apart from them, and belongs to the Church ‡. The *civil* rights of the State

* Vide his Commentaries, vol. i. p. 161.

‡ I am aware how much I here differ from the very able Prelate, who is for harneſſing Church and State together, like coach and horſes, that He as one of the drivers may enjoy the ſmack of the whip; a ſmack which he cannot forget, and which he gave me reaſon to remember when I was at Weſtminſter ſchool: but as I am now out of his clutches, ſo I hope I am out of his books too, at leaſt ſuch as are akin to his political ſermons. Vide Archbiſhop of York's Sermon, p. 10.

are of a *temporal* nature: they are *positive*, they are *general*, affecting every member of the community equally and alike. Religion is of a *ſpiritual* nature: it is a *negative* duty, and not a *poſitive* right: it is *not general*, but varies according to men's conſciences: it is the ſubject of *toleration*, for no laws can have power over men's minds. What Act of Parliament can make me believe that *three* is *one*, or *one* is *three*, if I do not chuſe to believe it? Or that my ſalvation in the next world is to be obtained by the belief of 39 Articles in this? The *eſtabliſhed* religion, therefore, is no more than that *dreſs* which the *State taylors* have provided for Religion to go to *court* in; and the ſame *taylors* that made this *dreſs*, can *alter* it, as we have ſeen, and as the faſhion of the times changes.

But if this was not the caſe with the *eſtabliſhed* religion, how, in the next place, does its alteration ſhew the right of Parliament to omnipotency? What effect has it had on the conſtitution? Are we *leſs* free now, either in Church or State, than we were before the Reformation? I ſhould imagine that we are *more* free in both, and if ſo, freedom being the firſt principle of the conſtitution, the *power* of Parliament to alter the *eſtabliſhed* religion has been but correſpondent to its *right*; and therefore, whilſt it is no proof of the ſupremacy of Parliament, I ſhould not be ſorry to ſee a little more alteration of it. I think it may ſtill be *amended*, without offence to the people, or in-

jury

x See Puffendorf's Laws of Nature pr: 662 Line 12 of Note 2.

jury to the conſtitution; nay even with ſatisfaction to ſome of the clergy themſelves.

The ſecond precedent is that of the High Commiſſion Court, and the Star Chamber; which is in direct proof of my argument: for they, being uſurpations of *power*, and abuſes of the *right* of Parliament, have been diſſolved; and therefore I agree with Mr. Burke that it would be madneſs to revive them, and for the reaſon given, that, upon recurring to firſt Principles, Power in Exertion, without Right, cannot ſubſiſt.

The third precedent is, "the King's negative "to Bills, which is wiſely forborne." This is the forbearance of a *known right* to a *power* veſted by the conſtitution in the Crown, and not the exerciſe of a power *unknown* to the conſtitution. As it therefore ſhews, that, even where there is a manifeſt *power*, that *power* is *limited*; ſo it proves, of courſe, that where there is no manifeſt *power*, there can be no *right* to *unlimited power*.

The laſt precedent is that concerning the Convocation of the Clergy; and to this, what I have ſaid on the head of the *eſtabliſhed* religion, inaſmuch as *eccleſiaſtical* matters have nothing to do with *civil* concerns, may here be applied. But I do not recollect that, in bringing the Convocation of the Clergy to its preſent *formal* ſtate only, there was any exertion of power of any kind to this end. If I remember aright it was a bargain. It was agreed that, on their Convocations becoming merely paſſive, the be-

neficed Clergy ſhould pay no further ſubſidies to the government, as they uſed to do in Convocation; and that they ſhould be *repreſented* in Parliament, by being allowed to vote at the elections for Knights of the Shire: for before this they were not *repreſented* in Parliament, but in their own Convocations; and therefore Parliament had no *right* to tax them, nor were they taxed by Parliament, notwithſtanding its *unlimited power*, and "the "compleatneſs of its legiſlative authority over "this kingdom."

If this then be the reſult of theſe precedents, and the State of what has been offered by Mr. Burke *for this arbitrary right* in Parliament, extending even to Religion itſelf, and whoſe *power* is limited *only* by "the mere force of "civil diſcretion;" is there nothing further that may be ſaid *againſt* this *right?* I ſhall conſider. There is nothing ſo much talked of, and yet nothing ſo little underſtood, as the *Engliſh Conſtitution*. Every man quotes it, and upon every occaſion too: but few know where to find it. If one enquire after it, an Act of Parliament is produced. If you aſk what it is, you are told it is the *Law*. Strange miſtake! The *Conſtitution* and the *Law* are not the ſame. They differ, and in what manner I will endeavour to point out.

In the great *machine* of State there are found three *principal powers*, with a variety of others ſubordinate to them; particularly the Prerogative

gative of the Crown: which is a *power* there veſted not to counteract the *higher powers*, but, if at any time there ſhould be occaſion, to ſupply their deficiencies. The firſt of theſe *principal Powers*, is the *Power* of the *People*; the ſecond, the *Power* of the *Conſtitution*; the third, the *Power* of the *Law*. Now the *Power* of the *People* is firſt, becauſe, without *People*, there could be neither *Conſtitution* nor *Law*. The *Power* of the *Conſtitution* is ſecond, for it is the immediate effect of this firſt cauſe; and if the *People* and the *Conſtitution* make the firſt and the ſecond *Power*, there is no need to prove that the *Law* is the third *Power* of the State. It follows in the order I have laid down. As from the *People* then is derived the *Conſtitution*, ſo from the *Conſtitution* is derived the *Law*; the *Conſtitution* and the *Law* being, in a due courſe of lineal conſanguinity, the deſcendants of the *People*.

But now I ſhall be aſked, what is this *Conſtitution*, and what is this *Law?* I anſwer, that by pointing out their relations, their differences too are marked. But this is not enough: definition is neceſſary, and therefore, as a definition *of the name* I would ſay, that *Conſtitution* ſignified *Compact*, and was the ſame with *public or political Law*; and that *Law*, as here meant, was the *municipal or civil Law* of the State: but as a definition *of the thing*, perhaps *both* may beſt appear as derived the one from the other.

I define *Conſtitution* then to be, thoſe *Agreements* entered into, thoſe *Rights* determined upon, and thoſe *Forms* preſcribed, by and between the Members of any Society in the firſt ſettlement of their union, and in the frame and mode of their Government; and is the *Genus* whereof the *municipal or civil Law* of ſuch eſtabliſhed Community is the *Species:* the *former*, aſcertaining the reciprocal duties, or ſeveral relations ſubſiſting betwixt the *governors and governed*; the *latter*, maintaining the rights and adjuſting the differences ariſing betwixt individuals, as parts of the ſame whole. And this I take to be the true diſtinction, and real difference between the *Conſtitution* and the *Law* of England. But this is matter of *Theory* only. It is the *paſſive* ſtate of Government, and Government muſt be *active*. *Practice* therefore is to be ſuperadded to this *Theory*; and hence the origin of *Parliaments*.

What then are *Parliaments? Parliaments* make the *formal*, as *Rights* do the *ſubſtantial*, part of the Conſtitution; and are the Deputies, the Agents, or Appointees of the People, entruſted by them with the Powers of *Legiſlation*, for the purpoſe of preſerving (and not of deſtroying) the eſtabliſhed Rights of the Conſtitution. But what are the eſtabliſhed Rights of the Conſtitution? In detail they are multifarious; and many: but reduced to their firſt principles, they are theſe, " *Security of*

" *Life*,

" *Life, Liberty, and Property, and Freedom* " *in Trade.*"

Such are the great Outlines of the *Engliſh Conſtitution*, the ſhort hiſtory, or abſtract of that *original Compact*, which is the bond or cement of our *political* union, and which forms, in particular, the relations that exiſt betwixt the *legiſlative Power* of the State, and the *People*. But there is ſtill another relation to be conſidered. The *legiſlative Power* of the State muſt receive its force from an *executive Power*. This *executive Power* is lodged in the *Crown*, from whence a relation ariſes betwixt the *Crown* and *People*; and is called " the Contract between " King and People." As *Compact* then is that *Agreement* of the People with the *legiſlative Power*, or among themſelves, concerning their *ſame* Rights; ſo *Contract* is that *Bargain* of the People with the *executive Power* concerning their *different* Rights *. But here it will be

* Writers upon this ſubject have confounded the two terms, *Compact* and *Contract* together; making them to ſignify one and the ſame thing, though *really* different. *Compact* is an Agreement entered into without any other conſideration, than that of the plighted faith of the parties to the articles agreed upon: for the articles being *general*, it is equally the intereſt of every *individual* to obſerve them without any additional obligation; and ſuch is the *original Compact*, or *Conſtitution* of this country. But *Contract* is a *Bargain*, with a *condition* annexed thereto, that demands a *quid pro quo*; and ſuch is the " Con- " tract between King and People": for the *executive Power* being lodged in the *Crown*, the *King* may ſuffer the Laws to ſleep, or pervert them " from their right uſe to their worſt abuſe," which, making the articles of this Contract *not general*, calls for different covenants; and therefore the King, at his coronation, takes an oath to protect the Rights of the People; and the People, in re-

ſaid, How is this known, and where is this to be found? I reply, As well in the reaſon of the things themſelves, and our own experience, as in the letter and ſpirit of our Charters: for inſtance, in *Magna Charta*, which is not only declaratory of the *original Compact*, or fundamental Rights of the People, but is *itſelf* that *ſolemn Contract*, which was had between King and People, for the protection of thoſe Rights; and therefore, as ſuch, proves *quod erat demonſtrandum*.

But now I may be told, that although I have made a diſtinction between the *Conſtitution* and the *Law* of England, I have cited *Magna Charta*, which is an Act of Parliament, and conſequently the Law of England, as for the *Conſtitution* of England. The objection is ſpecious only, for it is groundleſs. In the firſt place, it is not true that *Magna Charta* is an Act of Parliament; and for this reaſon: that it was obtained in the field of battle, with ſword in hand, in Runing-Mead, between Wind-

turn, owe, and may be called upon to ſwear, Allegiance to the King. It may be further obſerved, that as it was not to be ſuppoſed that Parliaments, whoſe rights were preciſely the ſame with thoſe of the People, could poſſibly enact Laws ſubverſive of thoſe Rights, ſo the *original Compact* ſeeming to require no other ſanction, no other agreement between the legiſlative Power and the People was ever thought of: but now Corruption, that ſelf-devouring monſter of the State, making freſh covenants neceſſary, it is to be hoped, that the ſame *explicit, unevaſive, expreſs* Contract, which exiſts between the King and People, will ſoon, very ſoon, be made to ſubſiſt between the Parliament and People. It was the doctrine of *unlimited Power* in the Crown that obtained the former; it is the now new and more dangerous doctrine of *unlimited Power* in Parliament that muſt procure the latter.

for

ſor and Staines, where the *People* had pitched their tents, and where, as hiſtory further informs us, "King John and his adherents "appeared to be an inconſiderable num-"ber, but the Lords and Commons filled "the country."

It is therefore true, that *Magna Charta* was the Act of the People *at large*, and not of the Legiſlature *alone*. Beſides: it is proved by Acts of Parliament, that it is not an Act of Parliament; and that Parliament (*unlimited* as its power is now ſaid to be) has no power over it at all: for it is declared by the ſtatute of the 25th of Edw. I. that *Magna Charta* was obtained by the *common Aſſent of all the Realm*, and that it was to be received as the *Folcright*, or common Law of the Land. And by the 42d of Edw. III. all ſtatutes made againſt *Magna Charta* are declared to be void*: ſo that whilſt *Magna Charta* proves the *Conſtitution* to be anterior to the Law, Acts of Parliament ſhew that it is not ſubject to the Law, nor under the power of Parliament. But, in the next place, admitting *Magna Charta* to be an Act of Parliament, ſtill the objection remains without foundation. For *Magna Charta*, being not *enactive* of new Rights, but, as I have ſaid before, *declaratory* only of thoſe old Rights

* "En le Parlement noſtre Seignur le Roi tenuz a Weſtm' le "primer jour de May l'an de ſon regne quarantiſme ſecond "eſt aſſentu et accorde que la Grande Chartre et la Chartre "de la Foreſte ſoient tenuz et gardez en tous Pointz *et ſi nul "Eſtatut ſoit fait a contraire ſoit tenuz pour nul.*" 42d Edward III. chap. i. ann. 1368.

of the People, ſome of which are of Saxon anceſtry, others coeval with the firſt form of Britiſh Government, is a Law only in proof of the Conſtitution; and therefore ſupports my poſition, that the *Conſtitution* and the *Law* are not the ſame.

But there is ſtill another objection, which I muſt anticipate in order to remove. It may be objected, that if (as I have ſhewn) *the People be made the ſource of all power in the State*, in what manner is ſuch an idea to be reconciled with the doctrine, that "Government certainly "is an Inſtitution of divine Authority?" * for theſe (upon another occaſion) are the words of Mr. Burke; though, he adds, "that its *Forms* "and the *Perſons* who adminiſter it, all originate "from the People." What a pity that an "In-"ſtitution of divine Authority" ſhould ever be found in the hands of *Devils*, as our Government ſometimes unhappily is! But I do not mean to enter into the merits of this doctrine. Indeed I am bound not to do ſo: for I have ſaid, that I will not dive into myſteries, leſt I be drowned; and I will keep my word. But as this ſaid mode of attributing to *natural* effects *ſupernatural* cauſes, or mixing Church and State together, has already done a great deal of miſchief to the community; as I perceive that the *divine Right* of Parliaments, like the *divine Right* of Kings, to do what is *wrong*, with its

* Vid. Thoughts on the Cauſe of the preſent Diſcontents, fifth edit. p. 67.

concommitant

concomitant train, *paſſive obedience* and *non-reſiſtance*, is now from the

" Pulpit, drum eccleſiaſtic,
" That's beat with fiſt, inſtead of a ſtick,"

ſounding forth in the ears of the † People; as I am content to judge of things *paſt* by the *preſent*, leaving to others all better rules of judging; and inaſmuch as example goes before precept; ſo the preſent ſtate of America affording not only much notable information on this head, but ſerving to illuſtrate the whole of what has been here ſaid on the ſubject of Govern-

† See a Sermon preached before the Univerſity of Oxford, on Friday, December 13, 1776, being the day appointed by proclamation for a general Faſt. By Myles Cooper, LL.D. Preſident of King's College, New-York, and Fellow of Queen's College, Oxford. Publiſhed at the requeſt of the Vice-Chancellor and Heads of Houſes, and printed at the Clarendon preſs. This Doctor ſays, p. 12. " It is difficult indeed to aſſign any " reaſons that will juſtify the Rebellion of Subjects againſt the " ſovereign Authority." " Submiſſion to the higher Powers" " is enjoined at leaſt upon Chriſtians, under the ſevereſt penalty. " But were Chriſtianity altogether out of the queſtion, yet the " inſurrection of ſubjects againſt their rightful Governors, is " condemned by thoſe Laws which are fundamental to ſociety." He ſays too, p. 22. " When men's principles are wrong, their " practices will ſeldom be right. When they ſuppoſe thoſe " Powers to be derived ſolely from the People, which are or-" dained of God, and their heads are filled with ideas of ori-" ginal Compacts *which never exiſted*, and which are always " explained ſo as to anſwer their preſent occaſions; no wonder " that they confound the duties of rulers and ſubjects, and are " perpetually prompted to dictate where it is their buſineſs to " obey. When once they conceive the *governed* to be ſuperior " to the *governors*, and that they may ſet up their *pretended* " *natural Rights* in oppoſition to the *poſitive Laws* of the State; " they will naturally proceed to " deſpiſe dominion and ſpeak " evil of dignities," and to open a door for anarchy, confuſion, " and every evil work, to enter." What *more* did Sacheverel ſay? And yet Sacheverel was impeached, whilſt Doctor Cooper may expect preferment.

ment,

ment, I ſhall, with ſome advantage I truſt, and in as few words as I can, make uſe of the inſtance.

America, having declared itſelf independent of Great-Britain, returned to that ſtate of Nature, or ſtate of Society, where Government was to be inſtituted; and being ſo circumſtanced, whilſt it proceeded to form itſelf into ſeparate Commonwealths, or States, each Commonwealth or State provided a Conſtitution and Form of Government of its own; which, although differing in mode and manner, agreed in ſubſtance and effect. The Precedent therefore of one Conſtitution anſwering for every other, I ſhall here avail myſelf of ſuch extracts from the Conſtitution of *the State of Maſſachuſetts*, as are neceſſary to my purpoſe. This Conſtitution then, and Form of civil Government, conſiſt of forty-three Articles, and are entitled, "An Act of the *General Convention* of "the Commonwealth, or State of Maſſachuſetts, "declaring the ſame to be a free State, and "independent of Great-Britain, and eſtabliſh-"ing a new Conſtitution and Form of civil "Government; which *General* Convention "was elected by *the whole People* for this *ſole* "*purpoſe*, &c." It next recites thoſe (but too much to be lamented) *arbitrary* and *deſpotic* meaſures of this country, which occaſioned the Declaration of Independency; and after this, proceeds to ſay, "The antient Government "of this Colony being thus *totally diſſolved*, "and the People driven into *a State of Nature*,

"it

" it becomes their indiſpenſible duty, and what " ſelf-preſervation requires, to declare themſelves independent of Great-Britain, and to " eſtabliſh ſuch a Conſtitution and Form of " civil Government, as to them appears beſt " calculated to promote their greateſt poſſible " happineſs:" " And whereas it is abſolutely " neceſſary for the welfare and ſafety of the " inhabitants of this Commonwealth, that a " juſt and permanent Conſtitution and Form of " civil Government ſhould be eſtabliſhed as " ſoon as poſſible, *derived from and founded on* " *the authority of the People only, in whom is* " *the origin of all governmental Power*, and " who have at all times a right, by *common* " *conſent* (whenever the great end of Govern- " ment, the general good is not obtained) to " alter and change their Conſtitution and Form " of Government, in ſuch manner as may beſt " promote the ſafety and happineſs of the " whole."

" We, therefore, the Repreſentatives of the " Freemen of Maſſachuſetts, in *general Con-* " *vention* met, for the *expreſs purpoſe* of fram- " ing ſuch a Conſtitution and Form of Go- " vernment; gratefully acknowledging the " goodneſs of the ſupreme Governor of all, in " permitting us peaceably, and *by common con-* " *ſent*, deliberately to form ſuch rules, as we " ſhall judge beſt adapted for governing this " Commonwealth in juſtice and righteouſneſs; " and being fully convinced that it is our in-

" diſpenſible

" diſpenſible duty to eſtabliſh, to the utmoſt " of our power, ſuch *original principles* of civil " Government, as will beſt promote the gene- " ral happineſs of the People, do, by virtue of " the authority veſted in us by our Conſtituents, " declare, enact, and eſtabliſh the following " Conſtitution, and Form of civil Government, " for this Commonwealth, to be and remain " in full force therein, from and after the ſe- " cond Wedneſday in ———, and *forever* " *thereafter to remain unaltered*, except in ſuch " articles as ſhall hereafter, on new circum- " ſtances ariſing, or on experience, be found " to require alteration; and which ſhall, *by the* " *like authority of the People, convened for that* " *ſole purpoſe*, be altered, for the more effectual " obtaining and ſecuring the great end and " deſign of all good Government, *the Good of* " *the People*."

" Be it therefore declared and enacted by " the *general Convention* of this Common- " wealth, aſſembled *for the ſole purpoſe* of de- " claring and enacting Independency, and eſta- " bliſhing a new Conſtitution and Form of " civil Government, and by the authority of " the ſame, it is hereby declared and enacted, " as in the following general articles, viz.

1. " That this Colony is, and of right ought " to be, and for ever hereafter ſhall, by the " favour of all-gracious Heaven, be a free " State, and abſolutely independent of the

" Crown

" Crown and Government of Great-Britain;
" and ſhall be ſtyled, THE COMMONWEALTH,
" OR STATE OF MASSACHUSETTS."

5. " That this declaration of the general,
" fundamental, and eſſential Rights of the
" People of this Commonwealth, ſhall, *for*
" *ever hereafter*, be conſidered as the general
" fundamental of the ſaid new Conſtitution
" and Form of Government; *and every order,*
" *law, and ſtatute, that ſhall hereafter be made*
" *by the general Court of this Commonwealth,*
" *ſhall conform to the ſpirit, and plain ſimple*
" *meaning and intention of theſe general funda-*
" *mentals*; *and all and every order, law, and*
" *ſtatute, that may hereafter happen to be made,*
" *and ſhall be found contrary thereto, ſhall be*
" *null and void, and have no effect, and be im-*
" *mediately repealed: and no alteration in theſe*
" *general fundamentals ſhall hereafter be made,*
" *but only by the immediate conſent of the good*
" *People of this Commonwealth at large, or their*
" *deputies, choſen for that ſpecial purpoſe.*"

6. " That all men are born equally free
" and independent, and *their Maker has left*
" *them free liberty to ſet up ſuch Governments as*
" *beſt pleaſe themſelves.*" " That Magiſtrates
" were ſet up for the good of Nations, not
" Nations for the honour and glory of Magi-
" ſtrates." " That the Right and Power of
" Magiſtrates in every country, was that which
" the Laws of that country made it to be."

And,

And, " That uſurpation gives no right to " govern."

7. " That all men have a natural and un- " alienable right to worſhip God according to " the dictates of their own conſciences, and " to enjoy a full and free liberty therein; pro- " vided that they, under pretence of Religion, " do not attempt to ſubvert the Conſtitution " and Form of Government of this State, &c."

Here then is that in *eſſe*, what Dr. Cooper tells us " never exiſted," *an original Compact*. A Compact too, with *Powers* (which, accord- ing to him, " are ordained of God") *ſolely* de- rived from the People; and, the *governed* be- ing ſuperior to the *governors*, with natural Rights, " pretended," as he ſays they are, " ſet " up in oppoſition to the poſitive Law of the " State." Such is this Compact, and ſuch, I preſume, being all other *original* Compacts in their firſt inſtitution, it is no wonder that their exiſtence ſhould be denied; inaſmuch as they are the ſovereign antidotes of thoſe political poiſons, *Prieſt-Craft*, and *State-Craft*, whoſe objects are dominion over " the Beaſts of the " People *."

* Such is Doctor Cooper's *humane* appellation of thoſe perſons in America, who plundered, as he ſays, the Members of the Church of England, Him, I ſuppoſe, among the reſt, and others, of their property; adding, " without any means of pre- " ſent redreſs, though it is to be hoped, not without a proſpect " of future retribution." Methinks the Doctor, having re- ceived a ſlap on one cheek, in the true ſpirit of a Chriſtian, ſhould have turned the other, and not have looked forward to a proſpect of plundering the Americans of their property, becauſe

Here

Here too is an " inſtitution of Government," but where " the divine authority" of it is, who can diſcover? Indeed, in a century more, for we are already giving up *things* for *words*, *ſenſe* for *ſound*, and from the *golden* falling back into the *iron* age again, ſuch notions of Government may be well received. Tradition will inform poſterity that the Governments of America were inſtituted *de Jure divino*, and not without ſome reaſon on their ſide; inaſmuch as the more *natural* any Government is, in my opinion, the more *divine* it is: but now that we are witneſſes to their *inſtitution*, we know, we ſee, and we find that they are inſtituted *de Jure humano*.

The next obſervation to be made is the affinity of theſe Governments to that of our own country. They are founded on *original Compact*, and ſo is ours. The lines of diſtinction betwixt the People, the Conſtitution, and the Law, are marked there as they are drawn here. The Conſtitution is derived from the People, and the Law from the Conſtitution. The Law cannot alter the Conſtitution: for all and every Law and Statute that are, by the *general Courts*, (equal to our Parliaments) made contrary thereto, are null and void: neither is the Conſtitution *alterable*, but by general Conventions of the People *at large*, held *expreſsly* and *ſolely* for that purpoſe.

they had plundered him of his. However, whenever the Americans ſhall come to this country to deprive us of *our Liberties*, I will readily join the Doctor in his idea of Retribution.

If

If now then I ſhould profeſs to believe that there is no more of *divine authority* in the Government of England, than in the Governments of America, a ſample of which has been produced; and that the former is derived from the ſame powers, by the ſame means, and to the ſame end, namely; the *good of the whole*, as the latter: I hope I ſhall not be therefore accounted an *Infidel* by the *Church*, nor an *unworthy Member of Society* by the *State*. I muſt hope too, that if our *Parliaments*, who are the *Truſtees* of the People, and the *Guardians* of their rights, (for they are no more, and I am one of its Members) ſhould ever attempt to deſtroy thoſe rights, that, as they will well deſerve the fate, ſo may they feel all that vengeance which the offended *Majeſty* of an injured People can bring down on their heads. Parliaments who will ſupport the Conſtitution, will be ſupported by the People, and have nothing to fear; but thoſe who will ſubvert the Conſtitution, let them tremble, as one man, even as Charles the Firſt did, who loſt his head in ſuch an attempt; and which, as Lord Cheſterfield tells us, "if he had not loſt, we had certainly "loſt our Liberties."

Having thus gone over the conſtitutional ground of this country, and taken a comparative view of the foundation upon which its Government is ſuperſtructed, the inference to be drawn from thence is this; that if the Government be as I have ſtated it to be, and

as

as I ſhall hold it to be, till the contrary be proved, the *right to unlimited power* contended for in Parliament, cannot, in common apprehenſion, there exiſt. For although Mr. Burke aſſerts (and I mention this, becauſe I wiſh to ſtate, and not to miſtate his meaning, and if I do, I truſt he will impute it to the want of comprehenſion, and not to any intention in me) "that Legiſlators ought to do what Lawyers "cannot; for they have *no other* rules to bind "them but the great principles of reaſon and "equity, and the general ſenſe of mankind;" and although in arbitrary countries this be true, for there the People being *diveſted* of all power, and both the legiſlative and executive authority *veſted ſolely* in the Prince, he may have no other rules than theſe to bind *him*; yet in free countries the caſe is different. In England, "the *legiſlative*," ſays Lord Bolingbroke, "is "a *ſupreme*, and may be called, in one ſenſe, "an *abſolute*, but in none an *arbitrary* power." "It is *limited*," ſays Mr. Locke, "to the pub-"lic good of the Society." I ſay, it is *bound* by the rules of the Conſtitution, for the rules of the Conſtitution are to the Parliament, what the Law is to the Judges. The People make the Conſtitution, the Parliaments make the Law; and as the Judges are *bound* to determine according to the Law of the land*, ſo are Parlia-

* And yet determinations are made in the Court of King's-Bench, as if the imperial law *(fit law for an imperial crown)* or the law of Scotland, was the law of England.

ments *bound* to enact Laws according to the rules of the Conſtitution; and not according to *their own* principles of reaſon and equity, and *what they call* the general ſenſe of mankind: for theſe *may* differ with the principles of the Conſtitution, as we know they *have* done; and therefore ariſes the neceſſity of aſſerting the controul of the Conſtitution over the Law and the Parliament.

But of this power of the Conſtitution over the legiſlative authority Mr. Burke has himſelf given the moſt pointed caſe. He ſays, "before "this Act (that is before the Act for the partial "ſuſpenſion of the Habeas Corpus) every man "putting his foot on Engliſh ground, every "ſtranger owing only a local and temporary "allegiance, even a Negro ſlave, who had been "ſold in the Colonies, *and under an Act of* "*Parliament*, became as free as every other "man who breathed the ſame air with him." What is it then that, ſetting this Act of Parliament at defiance, manumits the Negro-ſlave ſo ſoon as he puts his foot on Engliſh ground? Let it not be ſaid that it is *the pure air* of this foggy iſland, that can work theſe wonderful wonders, for theſe are the half-witted ſayings of lawyers that would be orators, and fit only for the *lullabies* of nurſes, or the *ſingſongs* of children. Let it not be ſaid that *the Act is local*; for it is not local. The Act alluded to is the 5th of G. II. ch. 7. (but there are many other Acts to the ſame effect)

and

and it veſts a clear and unconditional property, confined no where, but abſolute every where, in the owner to his purchaſed ſlave; and yet when this owner ſhall bring his ſlave to this country, he ſhall loſe his ownerſhip in him; though he hold him *under an Act of Parliament* *. No:

* This ſtatute enacts that "the houſes, lands, *Negroes*, and *other* "hereditaments and real eſtates, ſituate or being within any of "the ſaid Plantations, belonging to any perſon indebted, ſhall "be liable to, and chargeable with, all juſt debts, duties, and de-"mands, of what nature or kind ſoever, owing by any ſuch per-"ſon to his Majeſty, *or any of his ſubjects*, and ſhall and may be "*aſſets* for the ſatisfaction thereof, in like manner as real eſtates "are by the law of England liable to the ſatisfaction of debts due "by bond, or other ſpecialty, &c. &c." In caſe then any ſubject of his Majeſty ſhould accept a Negro in ſatisfaction of a juſt debt due to him in any one of the Plantations, and ſhould bring that Negro with him to this Country, it would ſeem that, under the above Act of Parliament, he was entitled to hold ſuch Negro as his property: But Lord Mansfield has, in the Teeth of this Act of Parliament, and of many others to the ſame effect, and in flat contradiction too to the opinions of the Lord Chancellors Talbot and Hardwick, determined otherwiſe; no doubt for the reaſon given in the Text, his Lordſhip being a great lover of the Conſtitution and a friend to Liberty; and for no other reaſon, ſeeing that this determination has proved very injurious to thoſe owners of Negroes here who thought themſelves poſſeſſed of them under this law and by theſe opinions, but who, by his Lordſhip's means, are now diſpoſſeſſed of them. It is ſomewhat curious to remark too, that at the very time that Lord Mansfield was giving Liberty to *Negroes* in this Country, and of courſe was taking away, without the Verdict of a Jury, what was before held to be *property*; his Lordſhip gave his countenance and aſſent to an Act of Parliament for holding *Engliſhmen* in the moſt abject State of Slavery. The Act alluded to is the *Convict-Act*: Of the principles of which Sir William Blackſtone ſpeaks to the following effect: "Upon theſe principles," ſays he, "the Law of "England abhors, and will not endure the exiſtence of, Slavery "within this Nation: So that when an attempt was made to in-"troduce it, by ſtatute 1. Edward VI. c. 3. which ordained, that "all idle vagabonds ſhould be made ſlaves, and fed upon bread, "water, or ſmall drink, and refuſe meat; ſhould wear a ring of "iron round their neck, arms, or legs; and ſhould be compelled "by beating, chaining, or otherwiſe to perform the work aſſigned "them, were it never ſo vile; *the Spirit of the Nation could not*

it is neither the one, nor the other, that gives occaſion to this manumiſſion. It is the Conſtitution of England, which maintaining *liberty*, and annihilating *ſlavery*, renders this Act of Parliament a *tabula raſa*, a blank parchment, without operation, without force, without effect. *It is that Conſtitution, which is now reſiſting the rebellion of Acts of Parliament againſt it.*

In ſhort, my idea of this Government, to ſpeak as a lawyer would do, is, that *Parliaments*, as I have ſaid before, are the truſtees of the People, the *Conſtitution* the deed of truſt, wherein they ſtand ſeized to *uſes* only; and theſe *uſes* being named, they cannot depart from them: but for their due performance are accountable to thoſe by whoſe conveyance the truſt was made*. The *right* is therefore *fiduciary*, the *power limited*, as the very Nature of a Truſt implies. Or as a mathematician would ſay, more in the road of demonſtration; the *Conſtitution* is as a *Circle*, the *Laws* the *Radii* of that *Circle*, drawn on its ſurface with the pen of

" *brook this condition*, even in the moſt *abandoned rogues*; and " therefore this ſtatute was repealed in two years afterwards." Blackſtone's Comm. v. i. p. 424. And it muſt be obſerved that Sir William produces this caſe as the reaſon why Negroes become freemen in England. But yet whilſt in this inſtance property licenſed by Act of Parliament is taken away, what is forbidden by the Conſtitution is by the Convict-Act paſſed into a Law; and *the Spirit of the Nation* in the reign of George III. is made *to brook the condition* which in the reign of Edward VI. it could not endure.

* Serjeant Holt laid it down as a maxim, " that the Govern- " ment and Magiſtracy was a *truſt*, and that any acting contrary " to that *truſt* is renouncing of the *truſt*, though it be not a re- " nouncing by a formal deed." See Ech. Hiſt. of Eng. p. 1144.

Parliament,

Parliament, and it is the known quality of a circle, that its *radii* cannot exceed its *circumference*, whilſt the People, like the *compaſſes*, are fixed in the center, and deſcribe the *circle* *. Theſe, I ſay, are my ideas of this Government, that is, of the whole political ſyſtem of this country, for this is what I would mean by Government, and I hope that they are juſt and true; or otherwiſe, dreadful indeed is the proſpect before us! For if Parliaments have the right to alter the "eſtabliſhed religion of "the land," and "if any thing can be ſup-"poſed out of the power of human legiſla-"ture, it is religion;" if they are bound by no other rules than "the great principles of "reaſon and equity, and the general ſenſe of "mankind," and not by the more determined principles of the Conſtitution, nor ſubject to the controul of the People; if, by the influence of corruption they are become "the Maſters, "inſtead of the Servants," of their Conſtituents, looking *down* on the People, and *up* to the Court for honours and preferments, and granting money that they may receive it themſelves; I ſay, if theſe things be ſo, and are they not ſaid to be ſo? where is the difference be-

* "Fundamental Laws are, and ſhould be, as conciſe as poſ-"ſible, and are expreſſive of the mutual compact between the "Governors and Governed, for the benefit of both. They are "as immoveable points in a circle, whence all other decrees, "Acts of Dyet, *Parliament*, and Aſſembly flow. If they are "preſerved entire the reſpective ſocieties will thrive and flouriſh; "if not, they will tend towards a Diſſolution. Vide Preface to Phillips's Fundamental Laws, p. 7.

twixt a *free* and an *arbitrary* country? where the difference between the deſpotiſm of the King of France, and the deſpotiſm of the Parliament of England? And what is this but to erect an *Ariſtocratic* tyranny in the State, a many-headed *Leviathan*, deplorable and to be deplored, dangerous and deſtructive, in proportion to the numbers of which it conſiſts.

Hitherto I have conſidered the *Supremacy* of Parliament, or its *right to unlimited Power* in and over *this Kingdom*; and if I have ſhewn, that no ſuch Power can exiſt in Parliament from the very nature of its inſtitution, for it is a ſoleciſm in politics, and an abſurdity in terms, to ſay, that in a *limited* Government, there can be *unlimited* Power, the application of this Power over the Colonies muſt conſequently fall to the ground; and with it the occaſion of any further reaſoning upon the ſubject. But as Mr. Burke has made ſome aſſertions reſpecting this "unlimited legiſlative Power over the "Colonies," that are not only new and different from every other Writer, but new and different from himſelf too, I hope, I ſhall be excuſed the treſpaſs of a page or two more in the further conſideration of this matter.

Mr. Burke ſays, "When I firſt came into a "public truſt, I found your Parliament in poſ-"ſeſſion of an *unlimited legiſlative Power* over "the Colonies. I could not open the *Statute-book* without ſeeing the actual exerciſe of

"it,

" it, more or leſs, *in all caſes whatſoever.*" Theſe then are what I have called aſſertions without the ſhadow of proof, or more properly aſſertions with the moſt convincing proofs of their being without foundation; for the proofs are taken from Mr. Burke himſelf. Here Mr. Burke ſays, " I could not open the *Statute-*" *book* without ſeeing the actual exerciſe of " this *unlimited Power* over the Colonies *in all* " *caſes whatſoever:*" but attend to what Mr. Burke ſays in his ſpeech on American Taxation, April the 19th, 1774, p. 40, 3d edit. printed for J. Dodſley, in Pallmall. There he ſays, " This is *certainly* true; that no Act avowed-" ly for the purpoſe of revenue, and with the " ordinary title and recital taken together, is " found in the *Statute-book* until the year " 1764. All before this period ſtood on *com-*" *mercial* regulation and reſtraint;" and to prove this, that is, that " a Parliamentary in-" land Taxation" was not to be found in the *Statute-book* before the year 1764, is the buſineſs of this entire page: but as the extract would be too tedious for this place, ſo whilſt I refer the Reader to the page itſelf, I will take the liberty of recommending to his peruſal alſo the whole Speech, as a moſt excellent oration. If then America was not " taxed *internally* for " the purpoſe of revenue before the year 1764, " but all before this period ſtood on *commer-*" *cial* regulation," here is a caſe of Mr. Burke's own former ſhewing, that *contradicts*

the caſe he now puts, of an "actual exerciſe "of *unlimited legiſlative Power* over the Co-"lonies *in all caſes whatſoever*:" for if Mr. Burke could not find the exerciſe of this Power, that is, of internal Taxation over the Colonies for the purpoſe of Revenue, in the *Statute-book*, before the year 1764, no ſuch Power having been ever exerciſed, he could not find the exerciſe of *unlimited legiſlative Power* over the Colonies *in all caſes whatſoever*, before the year 1764; and if he did not *then* find it, he could not find it *after* the year 1764: for the firſt inſtance of the exerciſe of this Power after the year 1764, was that of the Stamp-Act; and this Act, as ſoon as it paſſed, was reſiſted, and being reſiſted, it was repealed, and being repealed, it could afford no proof of the poſſeſſion of the Power. And yet Mr. Burke adds, "this poſſeſſion paſſed with me for a "title." But, if, as has been ſaid, Parliament was not poſſeſſed of the Power of internal Taxation over the Colonies before the year 1764, no title to unlimited legiſlative Power *in all caſes whatſoever*, before this time, could be founded on poſſeſſion; for here is a manifeſt exception to this poſſeſſion in the caſe of an *inland* Taxation: and from the year 1764, no title can be derived from poſſeſſion, for the title has been always diſputed, and poſſeſſion never obtained. So far then Mr. Burke is new and different from himſelf. In what follows, he is new and different from others.

No

No one has ever before contended, as I know of, for the right of Parliament to tax America, without the annexed idea of America being repreſented in Parliament. The idle phantom, the Cock-lane Ghoſt, of *virtual* Repreſentation, has been ever conjured up, as the *ego ſum illa*, of this vile deception *. But Mr. Burke has aſſerted, has maintained, and has proved, that America is not repreſented in Parliament, and yet inſiſts for the unlimited Right in Parliament to bind America *in all caſes whatſoever*. He ſays, " If any thing can be " drawn from ſuch examples by a parity of the " caſe, it is to ſhew, how deep their crime, " and how heavy their puniſhment will be, " who ſhall at any time dare to reſiſt a diſtant " Power, actually diſpoſing of their property, " *without their voice or conſent to the diſpoſition*; " and overturning their Franchiſes without " charge or hearing ‡." Here then is his aſſertion, that America is not repreſented in Parliament; and his aſſertion that Parliament has an *unlimited* legiſlative Power over America *in all caſes whatſoever*, has been already ſtated: which is a poſition as unaccountable to me, as it is new. But let me ſee if ſuch a poſition is defenſible, and whether a queſtion or two may not ſerve as an anſwer thereto. The firſt queſ-

* It is ſaid that Doctor Johnſon, the reputed Author of " Taxation no Tyranny," believes in Ghoſts; and that he often went to ſee the Cock-Lane Ghoſt. It is no Wonder therefore that ſuch a Believer ſhould believe in the *virtual* Repreſentation of America.

‡ See alſo Mr. Burke's Conciliatory Propoſitions.

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tion I ſhall propoſe is, Whether Repreſentation in order to Taxation be not an *hereditary* indiſpenſible privilege of the Britiſh Subject? The next queſtion is, Whether the Americans are Britiſh Subjects or not? for if they are not Britiſh Subjects, Great Britain has nothing to do with them, no more than France, or Spain, or any other country has: And again, if they are Britiſh Subjects, and Repreſentation in order to Taxation be the *hereditary* indiſpenſible privilege of a Britiſh Subject, Repreſentation in order to Taxation muſt be the *hereditary* indiſpenſible privilege of the Americans, as Britiſh Subjects. From whence then can the Right to Parliament be derived of unlimited legiſlative Power over the Subjects of Great-Britain *in all caſes whatſoever* without Repreſentation in Parliament, which the Americans do not poſſeſs, as Mr. Burke has ſhewn; and which, in order to Taxation, is the *hereditary* indiſpenſible privilege of Britiſh Subjects? I preſume it cannot be derived from the Conſtitution; for no man will aſſert, that the Conſtitution gives a Right to Parliament to levy Taxes upon Britiſh Subjects without Repreſentation; and if the Conſtitution does not give this Right, the claim of it in Parliament muſt be *unconſtitutional*: which naturally brings me to the conſideration of the *declaratory Act*, as falling under this point of view.

Mr. Burke has proved that America is not repreſented in Parliament: every wiſe man ſays the ſame: and it is only *folly the laſt*

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that would aſſert the contrary. The declaratory Act declares, and Mr. Burke ſupports the declaration, that this country has a right to bind America *in all caſes whatſoever*; and of courſe to tax America, *though not repreſented in Parliament*. Upon theſe principles is it poſſible to maintain this Act? It has no foundation. It reſts not upon the Conſtitution. It is ſubverſive of the Conſtitution. It has not the fundamental requiſites of a declaratory Law. No Law declaratory of Rights was ever before made, or ought to have been made, whoſe recital did not expreſs the ſources from whence thoſe Rights are derived; whether *direct* from the Conſtitution, or *indirect* from other Acts of Parliament founded on the Conſtitution, or from general Cuſtoms, or particular Cuſtoms, which make the Common Law of the Land. Look from *Magna Charta*, through every declaratory Law, down to the *Act of Settlement*, and it will be found that they are, every one of them, *in perpetuum rei teſtimonium*, or teſtimonials only of what had *before* exiſted: But this Law is declaratory not only of what *never* exiſted *before*, but of a Right, againſt which *common uſage*, which is the *common Law of the Land*, has been *ever* in direct oppoſition. I ſay *ever* in direct oppoſition: for America, from beyond the memory of man, nay, even from the very firſt date of its civil exiſtence to the Era of this reign, has been uninterruptedly uſed to the *internal* Taxation of itſelf.

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This Law therefore muſt be repealed. As it was enacted for the dignity of this country, ſo for juſtice ſake, which is the true dignity of this country, let it now be repealed. It is againſt Right, and uſurped Power cannot uphold it. It is true the motives that brought it into being were intentionally upright, but with the patronage of the Author of thoſe motives, the motives themſelves ceaſed*; and of the Act ſince, the *double Cabinet*, as Mr. Burke calls them, has made an infamous uſe. They knew not where to look for the Right of Taxation. They found it in this Act, and have ſo tyrannized under it, that America has now ſtamped its foot upon it, and will never ſtir a ſtep until "this tyranny be overpaſt." Every iſland in the Weſt-Indies look upon it with terror. All Ireland ſee it with a jealous eye: For who is the Caſuiſt that can diſcriminate between a Britiſh parliamentary Right to tax America, and a Britiſh parliamentary Right to tax Ireland? The caſe is the ſame. The Right has been avowed in Parliament, and add to the 6. Geo. I. ch. 5. or Iriſh declaratory Act, the words only, "*in all caſes whatſoever*," and the matter is at iſſue: but *Inexpediency* prevents

* It is to be obſerved, to the honour of the noble Marquis, under whoſe miniſtry the declaratory Act paſſed, that, when the miſchiefs that had ariſen in America were imputed to this Act, (and what is moſt ſingular, by the very author himſelf of all the miſchiefs) his Lordſhip, ſtanding up in his place in Parliament, and clapping his hand on his heart, ſaid; "If any miſchiefs "have been derived from this Act, I vow to God, they were "never intended by Me."

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the exerciſe. *Inexpediency!* curſe on the term! What is *inexpedient* to-day, may be *expedient* to-morrow. *Inexpediency* is as the tyrant's ſword, that hangs over the head, ſuſpended by a thread; and which *Diſcretion* only is to keep from falling. But are Engliſhmen to be thus *worded* out of their Rights? Forbid it, Common Senſe! Or rather let the fixed Principles of the Engliſh Conſtitution, and the eternal Rights of Humanity, be the ſiſter Fates to cut this Thread of Danger, by upholding in its room—*Themſelves.*

One word more. It may be further aſked, What! are the Americans to enjoy all the Rights appertaining to this Government, and not contribute to its ſupport? I anſwer, by no means: it is not fitting that they ſhould. The fundamental Rights of the Engliſh Conſtitution I have ſhewn to be, *the ſecurity of Life, Liberty, and Property, and Freedom in Trade*; and to theſe Rights all Britiſh Subjects *within the realm*, are without exception, entitled, and ſhould enjoy: but it is not ſo with Britiſh Subjects *out of the realm*, for *of them* ſomething more is required, and *of them* ſomething more has been received. They, (I mean the Coloniſts) ſurrendered from the firſt, one of the fundamental Rights of the Conſtitution, to wit, *Freedom in Trade* *. This they gave up, and this they

* Monteſquieu ſays, "The *Magna Charta* of England forbids "the ſeizing and confiſcating, in caſe of war, the effects of fo"reign merchants; except by way of repriſals." "It is, (he adds) "very remarkable, that the Engliſh have made this *one of the ar-*

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put into the *monopolizing* hands of their brethren here, as the gift of Contribution, for the price of Protection. Excellent, and how valuable the exchange! when the very gift of contribution did itſelf enhance the price of protection! ineſtimable jewel! than which a nobler did not enrich the royal crown; and yet noble as it is, it was not enough to ſatisfy the appetite of deſpotiſm. More muſt be had. All was required. With *Freedom in Trade, Life, Liberty, and Property* were to be parted with; or, in the alternative, the revenge of *Herod* was to be taken in the blood of Innocents. Revenge has been purſued: but *Herod-like*, and I will uſe the language of the immortal Shakeſpear;

" When you ſhall theſe unhappy deeds relate,
" then muſt you ſpeak,
" *Of one*, whoſe hand
" Like the *baſe Judean* * threw a pearl away
" Richer than all his Tribe."

I have now done with the Thoughts, which the peruſal of Mr. Burke's Letter had awakened in my mind; and find myſelf arrived at that period where I had deſigned to ſtop: but as I am upon the important ſubject of America, as there are one or two matters more that reſting on my mind, I could wiſh to remove, and as I ſhall not again trouble the public with any further ſentiments of mine upon this occaſion (for

" *ticles of their liberty.*" Vid. Spir. of Laws, b. ii. c. 13; and ſee alſo Magna Charta, art. 49, where *freedom in trade* is eſtabliſhed.

* This *was* Herod, who ſlew his Wife Mariamne.

truth

truth being my only object herein, I ſhall as readily look for it in others, as ſeek it in myſelf) ſo, if I ſhould advance one or two paces beyond my journey's end, I hope I ſhall be excuſed.

Having attended my duty in the Houſe of Lords upon every important debate reſpecting America, it was there that I derived much uſeful information to myſelf: but yet, however inſtructed, as I truly have been, by the wiſdom of thoſe who oppoſed the meaſure of a deſtructive civil war, I muſt confeſs, my mind has been more made up on this ſubject, by what has *not* been ſaid by the advocates for it, than by what has been advanced againſt it. The *firſt*, the *chief*, and the *great champion* of all, for this calamity to a country, has been the *now* Earl of Mansfield: but his being ſo, was to me, at the very firſt ſight, an argument againſt the war; for his Lordſhip is no *warrior*, and therefore I ſuppoſed that if he had been more competent to the events of ſuch an undertaking, he had been leſs *ſanguine* in his recommendations of it. Let us ſee, however, what his arguments were. The firſt point to be ſettled was, which of the two countries was the *aggreſſor*; and of courſe which was to blame: but this would not bear a diſpute, for in the year 1764, when all was peace and harmony between both countries, this country, by its Stamp-Act, flung the firſt *ſtone* at America, and ſo (the year 1766 excepted) Great-Britain continued this *ſtoning* of America, like as Stephen was *ſtoned*, to the year

year 1775; when, by Negroes and Indians *, the Americans were to be *ſcalped* and *flayed* alive, even as Bartholomew was; and, in both inſtances, perhaps for the ſame reaſon: for Stephen and Bartholomew were *Saints*, and the Americans are called Diſſenters, and Diſſenters are curſed, by ſome Church-of-England-Men, as *Saints*. To get rid then of this ſtumbling-block, of *aggreſſorſhip*, ſomething was to be deviſed; and this ſomething was, that America meant to become independent of this country ‡: But how was this to be ſupported? The learned Lord proved it by *inuendoes*, by *ſayings* and *do-*

* See Lord Dunmore's Proclamation, dated Williamſburg, Virginia, Nov. 11, 1775, and declared to be, "in Virtue of the "Power and Authority to him given by his Majeſty." A Proclamation, which not only excites the *Negroes* to rebellion againſt their maſters by way of quelling a rebellion, but, by declaring *Negroes* FREE, proceeds (ſo far as this goes) to a repeal of the African laws; ſince it is under theſe Acts of Trade, and by them alone, that the *Right* of every maſter to his *Negro* originated, and is held. Was this power given to his Majeſty by Parliament? And if not, it is declared, by 1. W. and M. ſt. 2. c. 2. "that "the pretended Power of ſuſpending, or diſpenſing with Laws, "or the Execution of Laws, by regal Authority without Con-"ſent of Parliament, is *illegal*." See too, the Speech to "Brother Captain White-Eyes" (an Indian Chief) ſigned "your ſincere friend and elder brother, DUNMORE."

For both the above references, look into Almon's Remembrancer for 1776, vol. i. pag. 176, and pag. 221.

‡ Upon the late Inquiry of the Houſe of Commons into the Conduct of Sir William Howe in America, the Miniſters produced two witneſſes (a General Robinſon who had reſided 24 years in America, and a Mr. Galway, a native of America, and who had been a Member of Congreſs there, and therefore both competent to the fact) who proved, in the courſe of their evidence, that Independency had never been the object of America, and that even now two thirds of the People were for a Dependency upon this Country, and againſt Independency. What then muſt be done to them who made the Independency of America the pretence for lighting up a bloody and a cruel Civil War in that Country, and which has ended in the diſgrace and ruin of this?

*ings*,

*ings, à priori,* out of the American Aſſemblies; from Montcalm's Letters, which have been found to be forgeries; and from Kalm's Travels, who made a voyage to America in the year 1749, and who ſays, that he was *there told,* that "the Engliſh Colonies in North "America, in the ſpace of thirty or fifty years, "would be able to form a ſtate by themſelves, "independent of Old England." But here I muſt beg leave to make an obſervation or two. Suppoſing Mr. Kalm, in his Way to North America in the year 1749, had come into England, and on his arrival had been *told,* that there were men in this country who *on their bare knees had drank the Pretender's health*; would not the inference have been juſt as fair to ſay, that this country meant to put the Pretender on the throne of this kingdom, in excluſion of the preſent family, as to ſay, what Mr. Kalm does ſay, that America meant independency? I think it would: for the queſtion is not what individuals ſay, but what is the ſenſe of the nation. And it is plain it was not the ſenſe of this country to put the Pretender on the throne, and I hope it never will, notwithſtanding his health has been ſo drank, &c. &c. &c. &c.; and what the ſenſe of America was, appeared by the unanimous declaration of the people themſelves in the moſt ſolemn and authentic manner. They ſay, through their Congreſs, (and if ever the ſenſe of any people were taken, it was here found, for ſo free and

general an election of Repreſentatives was never before known in the annals of the world) "We "*chearfully* conſent to the operation of ſuch "Acts of the Britiſh Parliament, as are, *bona* "*fide*, reſtrained to the regulation of our ex- "ternal Commerce, for the purpoſe of ſecuring "the commercial advantages of the whole em- "pire to the Mother Country," &c. &c. * It may indeed be ſaid, that America has declared herſelf independent of this country, and therefore the prophecy of Mr. Kalm was true; but this does not follow: for this country, by putting America out of the protection of its laws, forced it, for ſelf-preſervation ſake, into that ſtate of Independency. Admitting, however, that America did mean Independency, I will now aſk, Were the meaſures purſued the means to prevent her becoming ſo? I apprehend not: For although the force of this country be ſufficient for conqueſt, ten times its force would be inſufficient to hold the country in ſubjection. Three millions of people, not only with their affections loſt, but their inveterate hatred gained, at three thouſand miles over the Atlantic, diſtant from the arm of power, are not ſo eaſily held proſtrate at the feet of Parliament, as Lord North was directed to ſay could be done. No: One hour of juſtice and moderation would have done more, than all the German Blood-hounds hired from all the German Traf-

* Vid. Votes of the Congreſs, reprinted for J. Almon, oppoſite Burlington-houſe, Piccadilly, and alſo the laſt Petition of the Congreſs to the King.

fickers

ſickers in Blood, in all the petty Principalities of Germany, can atchieve in twenty years to come.

But to return to the learned Lord. Having ſet up Independency, and upon what grounds I have ſhewn, as the object of America; his Lorſhip argued, that the Rubicon was paſſed, that we ſhould kill the Americans, or the Americans would kill us, and that we could not look back, but muſt go forward, though our deſtruction be certain and inevitable. In ſhort he drove us on, until we are all now driven, like ſo many aſſes, into a *Pound*; and are ſo *impounded*, that Thirteen Shillings Land-Tax in the *Pound*, nay, all the *Pounds*, Shillings, and Pence in the Nation, will not *unpound* us*. Such is our diſgraceful, and truly to be lamented, ſituation. The contempt of ourſelves, and the mockery of all Europe beſides. Bullied by Frenchmen, inſulted by Spaniards, memorialized by Dutchmen; and yet, happy

* The diction of this ſentence has, it ſeems, for want of other matter, proved an excellent bone for the Critics to pick: But in this they have rendered a ſervice which they did not mean to perform: For the truth of the Fact not even their effrontery could venture to deny, and the importance of the fact is obvious to all. By their ſnarling and noiſe therefore, the inquiries of others have of courſe been awakened to know what was the matter; and thus whilſt the *matter* was got at, the end has been obtained by the *manner*.

But in juſtification of the rhetoric itſelf of this ſentence, it is the buſineſs of every Writer when he makes uſe of Tropes and Figures to employ ſuch as will be beſt underſtood by thoſe for whoſe uſe he writes. The idea therefore of being an Aſs in a Pound, and of paying Thirteen Shillings Land-Tax in the Pound was perhaps the beſt Mirror of Reflection that could be held up to thoſe Country-Gentlemen who have been brought into this ſituation, by abetting and ſupporting the American War; and is what the Logicians would call *Argumentum ad Hominem*.

would it be for us, if theſe were the only evils that we are to ſuffer.

Another argument for our entering into this ſavage War was, that the Americans were Cowards; an argument as full of indignity to this country, as it was of reproach to him that made it. Of Indignity, for are We to go to war with our enemies becauſe they are cowards? Does Engliſh valour want ſuch motives of inducement for its exertion? Shameful reflection! Of reproach, for it was the argument of the firſt Lord of the Admiralty, the Earl of Sandwich, that high Officer of the State, placed at the Head of the Britiſh Navy. And is this the language of the gallant Navy of England? No: the brave love the brave, and had rather meet bravery in the wounds of themſelves, than cowardice in the diſgrace of others. To fight with Cowards is the loſs of Honour, and "Honour is the Sailor's, as the Soldier's care." But the Americans are not Cowards, and this I ſay for the honour of this country. If they were, ſuch an Army and ſuch a Navy doing no more than has been done in America, would well warrant the propriety of thoſe incitements to action, which the Earl of Sandwich thought neceſſary to hold out in the cowardice of America. When the Americans, therefore, are called Cowards by us, let us remember that it is not them, but ourſelves, that we accuſe of Cowardice.

The laſt argument I ſhall take notice of, (for it is endleſs to recount the abſurdities that have been

been urged in ſupport of this iniquitous warfare) and which I mention for that it ſeems to contain a *ſecret* that ſhould be known, is the argument of Lord Cardiff, ſon of the Earl of Bute. His Lordſhip ſaid, as a reaſon for carrying on this War of Parliament, that the Americans had offered to lay kingdoms at the feet of the Crown, but which his Majeſty diſdained to accept *. This is an heavy charge, and, as I am as much an enemy to *arbitrary* power in the Crown, as I am to *arbitrary* power in Parliament, if true, I muſt confeſs, except ſo far as the juſtice of this nation is concerned in ſuch a war, I ſhould feel little concern elſe for America: but as it ſeems very unnatural that men ſhould be ſurrendering their liberties, at the very time that they are fighting for them, ſo I have reaſon to believe that this argument has been formed upon grounds that will not ſupport it. It is true, the Americans acknowledge the authority of the King, and will not acknowledge the authority of Parliament. It is from hence therefore, I preſume, inferred, that the Americans are laying kingdoms at the feet of his Majeſty; and if ſo, to explain this matter, is to remove the charge. The Americans were the ſubjects of the Crown of England, and of courſe owed allegiance to the King of England. They were never the *ſubjects* of their *fellow-ſubjects* the Parliament of England, and therefore neither owed nor profeſſed allegiance to

* The Archbiſhop of York has adopted the ſame aſſertion. See his Sermon, p. 22, and 23.

Parliament.

Parliament. Beſides, the King of England, by the Conſtitution of England, cannot levy taxes on his ſubjects; and therefore, for the Americans to acknowledge the authority of the King, is no ſurrender of their property to the King: whereas if they acknowledged the authority of Parliament, who do exerciſe the right of taxation over the People when repreſented, it would be, *without their being repreſented*, a ſurrender of their property to Parliament; and a forging of chains for themſelves. Under the acknowledged authority then of the Crown, the Americans ſtill preſerve their conſtitutional Rights: under the *required* acknowledged authority of Parliament, they would loſe them; and this is the reaſon that the Americans acknowledged the one, and will *never* acknowledge the other. But it is feared, that ſome future King, (not his preſent Majeſty, for he has not a wiſh to govern but through his Parliaments,) may, upon requiſition to his faithful American ſubjects, procure ſuch large grants of money, as ſhall enable him to govern without Parliaments. Indeed, if we are to judge of what America may do, by what it has done, upon ſuchlike occaſions, this argument is not without its force; and therefore, to prevent ſuch generoſity from being hereafter hurtful to this country, (and there cannot be a better time for it, as it is the object of his preſent Majeſty to maintain the *ſupremacy* of Parliament,) let an Act be paſſed, (if it be not too late) declaring that

that all money obtained from the Colonies by requiſition from the Crown, ſhall be carried into the Exchequer, and accounted for in Parliament. This will remove the danger apprehended, and prevent thoſe *lovers of ſlavery*, the Americans, from making, at any future period, the Crown of England arbitrary.

Upon the whole, when I perceive a war, and ſuch a war too, ſo weakly ſupported, and yet ſo violently purſued; when I find the moſt elevated of the Church, preaching and publiſhing to the world paſſive obedience and non-reſiſtance to the ſupremacy of Law *, whether that Law be right or wrong, whether it be good or bad, whether it be to eſtabliſh Popery

* The Archbiſhop of York ſays, "the foundation of legal freedom, is the *ſupremacy of law*." This I ſuppoſe is an apology for his Grace's *allegiance* to the Quebec-Act, and for his making this Act a pattern for cramming *Biſhopricks* down the Throats of the Americans, by the help of the Civil Power, that is, on the points of Bayonets. See his Sermon, pag. 19, and pag. 24.

His Lordſhip ſays too, "As there are in the nature of things, "but two ſorts of Government; that of Law, and that of Force; "it wants no argument to prove that under the laſt Freedom cannot "ſubſiſt." This is a diſtinction without a difference; for when *Law* is contrary to the natural or political rights of mankind, it is *Force*, and the worſt of all *force*: for it is as "a wolf in ſheep's cloathing," and cometh unawares, "like a thief in the night." See p. 19.

Again, his Lordſhip ſays, "Theſe indeed" (that is "Deſ-"potiſm and Anarchy) have uſually *gone together*, for no Anar-"chy ever prevailed, which did not *end* in Deſpotiſm." This is a Bull, but an Iriſh one; and not a Popiſh Bull. If where Anarchy prevails Deſpotiſm *ends*, Anarchy and Deſpotiſm muſt *follow* one another, and not uſually *go together*. See p. 20.

His Grace will excuſe the Attention I have paid him in the courſe of my obſervations: but as I am unfortunately one of thoſe Parties who have (according to him) "no Principle belonging "to them," and are "in the laſt ſtage of political Depravity," I was willing to examine, a little, his Lordſhip's principles; that if I approved them, I might adopt them.

or

or Proteſtantiſm, whether it be to expel Biſhops from the Houſe of Lords, or continue their undue influence there, whether it be enacted by an honeſt, or by a corrupt and abandoned Parliament; when I ſee men that were pillored in the reign of good old George II. penſioned in this, and for the ſame reaſons; when I hear of others hired to root out the very idea of *public virtue* from the minds, and tear *benevolence* from the hearts of Engliſhmen; when I reflect, but why add more to the black catalogue of public dangers? It is time to look at home: it is time, with more than *Stentorian* voice, to call for union among the Friends of the Conſtitution: it is time that private opinion ſhould yield to public ſafety: it is time that we keep both "watch and ward:" for if the liberties of our fellow-ſubjects in America are to be taken from them, it is for the ideot only to ſuppoſe that we can preſerve our own. The dagger uplifted againſt the breaſt of America, is meant for the heart of Old England. *Non agitur de vectigalibus, Libertas in dubio eſt* *.

In fine, theſe are my Sentiments, and theſe my Principles. They are the Principles of the Conſtitution; and under this perſuaſion whilſt I have *ſigned* them with my Name, I will, if neceſſary, as readily, *ſeal* them with my Blood.

* Cato Orat. ap. Sall.

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